

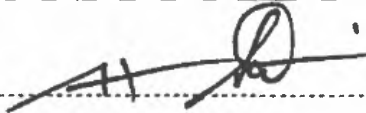
TRANSFER EXTENSION AGREEMENT

entered into by and between

The Province of the Eastern Cape

through its Department of Transport


("ECPG")

Physical Address	Stellenbosch Park, Cowan Close, Shornville, King Williams Town, 5600		
Signed at	East London	Date	18 February 2010
			
Name	HAROLD ROBERT LINDA SALIE		
Designation	ACTING SUPERINTENDENT-GEN		
who warrants that they are duly authorised to sign			

and

Fleet Africa Eastern Cape (Proprietary) Limited

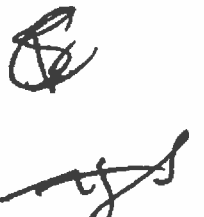
("contractor")

Description and Registration Number	a private company registered in accordance with the laws of South Africa with Registration Number 2002/029919/07		
Physical Address	9 Cotton Road, Westbank, East London 5200		
Signed at	East London	Date	18 February 2010
			
Name	KAMOGETO MMUTLANA		
Designation	DIRECTOR: FAEC (PT) LTD		
who warrants that they are duly authorised to sign			

In terms of which the Parties agree as follows:

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WHEREAS:

- the ECPG and the contractor (collectively referred to as “the parties”) entered into an Outsource Services Agreement (“the main agreement”) in August 2003;
- an amendment was made to the main agreement on 30 January 2009 (“the amendment agreement”) (the main agreement as amended by the amendment agreement shall hereinafter be referred to as “the OSA”);
- the ECPG indicated that a new service provider (“the former new service provider”) would be appointed to provide a fleet management service to the ECPG, and therefore that it did not intend to extend the OSA for any further period, and hence the OSA terminated on 31 July 2009;
- Schedule 9 of the OSA provided for a transitional plan to be developed by the contractor, and to be agreed upon by the parties, which Schedule survived the expiry of the OSA;
- on 31 July 2009 the parties entered into a Transfer Agreement (“the initial transfer agreement”) providing for the transitional plan from 1 August 2009 and all matters incidental thereto;
- during August 2009 an amendment was made to the initial transfer agreement (“the transfer amendment agreement”) (the initial transfer agreement as amended and reinstated by the transfer amendment agreement (as subsequently extended) shall hereinafter be referred to as “the transfer agreement”);
- the appointment of the former new service provider lapsed and in order to ensure no interruption of service delivery in the Province, the ECPG has requested that the services of the contractor be retained in terms of the transfer agreement;
- the transfer agreement was accordingly extended until 17h00 on 19 February 2010; and
- the parties have agreed to further extend the duration of the transfer agreement which is due to expire on 19 February 2010 on the terms set out in this transfer extension agreement.



NOW THEREFORE THE PARTIES AGREE THAT-**1 INTERPRETATION**

In this agreement -

1.1 clause headings shall not be used in its interpretation;

1.2 unless the context clearly indicates a contrary intention -

1.2.1 an expression which denotes -

1.2.1.1 any gender includes the other genders;

1.2.1.2 a natural person includes an artificial person and vice versa;

1.2.1.3 the singular includes the plural and vice versa;

1.2.2 the following expressions shall bear the following meanings and related expressions bear corresponding meanings –

1.2.2.1 “accounts committee” – the accounts committee established pursuant to the provisions of the OSA;

1.2.2.2 “acquired vehicles” – all vehicles provided to the ECPG by the contractor in terms of this agreement on or after the effective date,

1 Feb 2010



whether in terms of clause 8.2.2, clause 8.13.1, clause 8.13.2 (but excluding parameter vehicles (as defined in clause 8.13.2.1)), clause 8.2.3 or otherwise (but excluding all Ad Hoc Vehicles, all the current vehicles and all such additional vehicles which are the subject matter of a destruction event of which the contractor has been properly notified prior to the expiry of the transfer management period);

1.2.2.3 "acquisition price" – subject to the provisions of clause 8.5.2, in respect of each –

1.2.2.3.1 current vehicle which is a –

1.2.2.3.1.1 Leased Vehicle other than a specialised vehicle, the commencement capital value thereof depreciated by 1.66%;

1.2.2.3.1.2 specialised vehicle, the commencement capital value thereof depreciated by 2.08%;

1.2.2.3.1.3 tractor, the commencement capital value thereof depreciated by 1.66%,

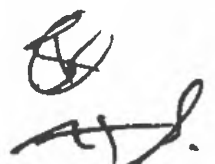
per month or part thereof from the date the lease thereof to the ECPG by the contractor commenced until the date of termination of this agreement;

1.2.2.3.2 additional vehicle which is a –

- 1.2.2.3.2.1 Leased Vehicle other than a specialised vehicle, the commencement capital value thereof depreciated by 1.66%;
- 1.2.2.3.2.2 specialised vehicle, the commencement capital value thereof depreciated by 2.08%;
- 1.2.2.3.2.3 tractor, the commencement capital value thereof depreciated by 1.66%,
- per month or part thereof from the date the lease thereof to the ECPG by the contractor commenced until the date of termination of this agreement;
- 1.2.2.4 "additional vehicle" – any vehicle provided to the ECPG by the contractor in terms of this agreement on or after the effective date (other the Ad Hoc Vehicles, parameter vehicles and the current vehicles but including the substitute ambulances);
- 1.2.2.5 "bulk fuel cards" - the fuel and fleet cards provided by the contractor to the ECPG for use in connection with any of the Vehicles as opposed to a card for use in connection with a specific vehicle;
- 1.2.2.6 "commencement capital value" – in respect of any –
- 1.2.2.6.1 additional vehicle, the price of such vehicle as indicated in the National Treasury RT57 tender at the time of acquisition of such vehicle by the contractor plus an amount equivalent to the actual cost incurred by the contractor in respect of fitments and accessories to the additional vehicle and the installation thereof;

- 1.2.2.6.2 current vehicle, the capital value thereof as reflected in Schedule 17 to this agreement;
- 1.2.2.7 "CPI" - the year on year increase in the Consumer Price Index as published from time to time by Statistics SA (with the index for 2008 as a base which equals 100) in its statistical release PO141, provided that if -
- 1.2.2.7.1 such index should cease to be published; or
- 1.2.2.7.2 the basis of the calculation of such index changes and pursuant to such change one Party notifies the others that it is not satisfied therewith; or
- 1.2.2.7.3 the Parties agree that, due to a change in circumstances, the index is no longer representative or (in circumstances where the Parties are unable to reach such agreement) where such fact is confirmed, in writing, by an independent actuary in the RSA (who shall act as an expert and not as an arbitrator and whose decision shall be final and binding on the Parties) appointed for such purpose by the president for the time being of the Actuarial Society of South Africa (or its successor),

then, in any such circumstances, the Parties shall use such official information or index as may be available and acceptable to them, or failing such availability and acceptance, an index determined in writing as being fair and reasonable by a majority decision of a panel of three independent actuaries in the RSA (who shall act as experts and not as arbitrators) appointed for such purpose by the president for the time being of the Actuarial Society of South Africa (or its




successor), whose determination shall be final and binding on the Parties. Any determination made by the majority of such panel as to the date from which any revised index shall take effect shall be final and binding on the Parties. The costs of the aforesaid actuaries shall be borne by the Parties in equal shares;

- 1.2.2.8 "current vehicles" – all of the Leased Vehicles supplied by the contractor to the ECPG as at 31 January 2010 but excluding all Ad Hoc Vehicles;
- 1.2.2.9 "destruction event" – in respect of any Leased Vehicle, the occurrence of any one or more of the following events, the –
- 1.2.2.9.1 destruction of such Leased Vehicle from any cause whatsoever;
- 1.2.2.9.2 loss of such Leased Vehicle from any cause whatsoever, including theft or the write off thereof by the contractor or its insurers;
- 1.2.2.10 "effective date" – notwithstanding the signature date or anything to the contrary contained in this agreement, 1 February 2010;
- 1.2.2.11 "fleet renewal plan" – the agreed plan for replacement of the current vehicles which are outside the parameters, which was developed and agreed between the parties and which is attached to this agreement as schedule 20;
- 1.2.2.12 "Heavy Vehicle" – a commercial vehicle with a gross vehicle mass of 3 500 kilograms or more than 3 500 kilograms;

- 1.2.2.13 "LDV" – a commercial vehicle with a gross vehicle mass of less than 3 500 kilograms;
- 1.2.2.14 "Leased Vehicles" – Leased Vehicles as defined in the OSA;
- 1.2.2.15 "Light Vehicle" – a passenger vehicle;
- 1.2.2.16 "new service provider" – any service provider selected by the ECPG following a public tender process to be the party which is to provide the ECPG with the same or similar services to those formerly provided by the contractor to the ECPG in terms of the OSA;
- 1.2.2.17 "signature date" - the date of signature of this agreement by the last of the parties to sign same;
- 1.2.2.18 "this agreement" – this transfer extension agreement and all schedules hereto, as amended from time to time;
- 1.2.2.19 "transfer management period" – the period commencing on the effective date and terminating on 31 January 2012;
- 1.2.2.20 "VAT" – the Value Added Tax as levied in terms of the VAT Act;
- 1.2.2.21 "VAT Act" – the Value Added Tax Act, Act 89 of 1991;
- 1.2.2.22 "Vehicles" – vehicles as defined in the OSA;

- 1.3 where the words "within the parameters" is used in relation to any Leased Vehicle it shall be construed as meaning a Leased Vehicle which is not excluded from the ambit of the provisions of Schedule 4 by virtue of the provisions of clause 8.7.2;
- 1.4 where the words "outside the parameters" is used in relation to any Leased Vehicle it shall be construed as meaning a Leased Vehicle which is excluded from the ambit of the provisions of Schedule 4 by virtue of the provisions of clause 8.7.2;
- 1.5 the word "specialised vehicles" shall mean any Leased Vehicle which is charged to the ECPG on the basis that it will travel 7 000 kilometres per month, as recorded in the relevant rate card;
- 1.6 where any term is defined within the context of any particular clause in this agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this agreement, notwithstanding that the term has not been defined in this interpretation clause;
- 1.7 any reference to any legislation is to such legislation as at the signature date and as amended or re-enacted from time to time;
- 1.8 if any provision in a definition is a substantive provision conferring any right or imposing any obligation on any party, then notwithstanding that it is only in the interpretation clause effect shall be given to it as if it were a substantive provision in this agreement;
- 1.9 when any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a day which is not a business day, in which case the last day shall be the next succeeding business day;



- 1.10 the use of a specified example/s (whether or not after the word “including” or “such as”) shall not be construed as limiting the meaning of the general wording preceding it and the eiusdem generis rule shall not be applied in the interpretation of such general wording or such specific example/s. Accordingly, without limiting the generality of the foregoing, wherever the words “includes” or “including” are used in this agreement, the words “without limitation” shall be deemed to follow them;
- 1.11 in the event of any conflict between any provision contained in the body of this agreement and any of the schedules or annexures to this agreement, the provision contained in the body of this agreement shall prevail;
- 1.12 the rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the agreement shall not apply; and
- 1.13 any reference to “days” shall, save as otherwise expressly provided for herein, be construed as calendar days. Any reference to “business hours” shall be construed as being the hours between 08h00 and 17h00 on any Business Day. Any reference to time shall be based on South African Standard Time.

2 OBJECTIVES AND PRINCIPLES

The objectives and principles of this agreement are to inter alia –

- 2.1 extend the period of operation of the transfer agreement in order to allow the ECPG a further period to assess its options with regard to fleet service provision without losing the services of the contractor;
- 2.2 amend the terms of the transfer agreement on the basis agreed by the parties.

3 EXTENSION

3.1 The parties agree that the transfer agreement shall, notwithstanding anything to the contrary contained therein, not terminate on 19 February 2010 as envisaged in the transfer agreement but shall, save as otherwise provided herein, continue until 31 January 2012 on the terms and conditions set out in the transfer agreement as amended by this agreement.

3.2 The termination of this agreement for any reason whatever shall not affect the operation of any provisions of this agreement to the extent to which they confer rights or impose obligations upon the parties which are exercisable or enforceable after the termination of this agreement, and such provisions shall to that extent continue to be of full force and effect. The termination of this agreement shall furthermore not prejudice any rights which shall have accrued to the parties as at the termination date.

4 TRANSFER AGREEMENT

4.1 For the purposes of clarity the parties have agreed to incorporate in this agreement the provisions of the transfer agreement which are to continue to apply from the effective date for the duration of the transfer management period.

4.2 Having regard to the provisions of clause 4.1, with effect from the effective date, the provisions of this agreement shall override and substitute the provisions of the transfer agreement on the basis that all the relevant provisions of the transfer agreement which are to apply during the transfer management period have been incorporated herein and amended where applicable by agreement between the parties.

5 THE OSA

- 5.1 In terms of, and save as provided in, the transfer agreement, the OSA terminated with effect from 31 July 2009, from which date the parties were released from their obligations in terms of the OSA.
- 5.2 Notwithstanding the provisions of clause 5.1, the ECPG is obliged to continue to honour all its obligations to make payment to the contractor in terms of the OSA and the transfer agreement in respect of all amounts which are or become payable to the contractor pursuant to the provisions of the OSA and the transfer agreement in respect of all periods prior to the effective date.
- 5.3 Save where expressly provided to the contrary in this agreement and subject to the provisions of clause 5.6, this agreement shall incorporate by reference the terms and conditions contained in the OSA, including without limitation the definitions and the rules of interpretation set out in the OSA and the schedules to the OSA, on the basis that each of the provisions of the OSA form an integral part of this agreement and apply for the transfer management period unless otherwise specified herein.
- 5.4 Should there be any conflict between the provisions of this agreement and those contained in either the OSA or the transfer agreement, the provisions of this agreement shall prevail. In such event the parties undertake to conform to the provisions of this agreement and to take whatever steps are necessary to give effect to the provisions as set out herein.
- 5.5 With effect from the effective date any reference in the OSA to "the/this agreement" shall be construed as meaning the OSA as amended by the amendment agreement and as amended by this agreement and any reference to any schedule to the OSA shall be construed as meaning such schedule as amended by the amendment agreement and as further amended by this agreement.
- 5.6 Annexure A attached to this agreement sets out the extent to which the provisions of the OSA shall not apply.

6 PAYMENT OF OUTSTANDING AMOUNTS DUE IN TERMS OF THE TRANSFER AGREEMENT

6.1 It is recorded that as at the effective date the ECPG is indebted to the contractor in –

6.1.1 the sum of R 35 868 700.24 (including accrued interest to the effective date) in terms of the transfer agreement in respect of the period ended 31 December 2009 (as recorded in the signed schedule attached hereto as Schedule 3);

6.1.2 respect of the excess insurance amount contemplated in clause 8.6.1.4;

6.1.3 respect of charges for the substitute ambulances as contemplated in clause 8.4.5; and

6.1.4 the sum of R 35 994 514.38 in respect of the Services billable up to the end of January 2010 on the terms and within the periods recorded in the transfer agreement.

6.2 The ECPG undertakes to pay the amount referred to in –

6.2.1 clause 6.1.1 to the contractor by not later than 28 February 2010; subject to clause 6.3;

6.2.2 clause 6.1.2 to the contractor by not later than 30 April 2010; and

6.2.3 clause 6.1.3 to the contractor by not later than the relevant payment dates recorded in clause 8.4.5; and

6.2.4 clause 6.1.4 to the contractor by not later than 28 February 2010; subject to clause 6.3.

6.3 The contractor acknowledges that the ECPG has made payments against the amounts recorded in clauses 6.1.1 and 6.1.4 subsequent to the effective date and that the ECPG's obligation to pay the amounts in question shall accordingly be reduced by the amounts of any payments made to the contractor subsequent to the effective date.

6.4 It is further recorded that the contractor is obliged to pay certain amounts to the ECPG arising under the provisions of clause 5 of the sale of business agreement executed between the parties on or about 4 August 2003. The contractor shall, subject to the provisions of clause 6.5, pay all such outstanding amounts including interest thereon at the prime rate calculated from the date that the relevant amount became due and payable to the ECPG, by not later than ninety days after the last of the the remaining sale and lease back vehicles (as contemplated in the sale of business agreement) have been either sold or withdrawn from the fleet.

6.5 Notwithstanding the provisions of clause 6.3, should the ECPG be indebted to the contractor as at the termination of this agreement for any reason whatever then the contractor shall, without prejudice to its other rights in terms of this agreement or at law, be entitled to retain and set off all amounts payable by it to the ECPG referred to in clause 6.3 and otherwise pursuant to the provisions hereof against the amounts due to it by the ECPG.

7 APPROVALS

The ECPG warrants to the contractor that prior to the signature date –

- 7.1 the ECPG has obtained written confirmation from the cabinet of the ECPG approving, ratifying and confirming the provisions of this agreement and recording their acknowledgement that this agreement constitutes a valid agreement binding upon the ECPG;
- 7.2 the ECPG has obtained written confirmation from the Head of Department – Department of Roads and Transport of the ECPG recording that the ECPG has complied in all respects with Treasury Regulation 16A6.4 issued in terms of the Public Finance Management Act of 1999;
- 7.3 the ECPG has obtained a letter from the National Treasury of the RSA to the ECPG acknowledging the conclusion of this agreement; and
- 7.4 the Department of Roads and Transport and the Head of the Department – Department of Roads and Transport of the ECPG have complied in all respects with their internal procedures dealing with procurement in so far as is necessary to conclude the agreement.

8 TRANSFER MANAGEMENT PROVISIONS

8.1 Exclusivity

8.1.1 Save as otherwise provided in this clause 8.1, the provisions of clause 28 of the OSA shall apply to this agreement save that clause 28.2 shall be supplemented to include the following further exceptions-

8.1.1.1 any chauffeur driven services required by ECPG;

8.1.1.2 any "Booze-buses";

- 8.1.1.3 any ad hoc vehicles or daily rental buses;
- 8.1.1.4 any road building equipment and "yellow plant"; and
- 8.1.1.5 any airport fire tenders and airport ambulances.

8.1.2 In consideration for the contractor agreeing to render the Services in terms of this agreement, the ECPG shall lease from the contractor a minimum –

8.1.2.1 of 2 888 Vehicles (excluding Ad Hoc Vehicles and including the ambulances referred to in clause 8.1.2.2) ("the minimum vehicle quantity"); and

8.1.2.2 of 239 ambulances ("the ambulance minimum"),

in terms of FML agreements as envisaged in clause 8.14.

8.1.3 Having regard to the provisions of clause 8.1.2 the ECPG shall –

8.1.3.1 not be entitled to acquire any vehicles or to lease any vehicles from any third party until such time as the fleet of Vehicles leased to the ECPG in terms of this agreement comprises at least the minimum vehicle quantity; provided that this clause shall not apply to the exceptions recorded in clause 8.1.1;

8.1.3.2

not be entitled to acquire any ambulances or to lease any ambulances from any third party until such time as the number of ambulances leased to the ECPG in terms of this agreement is greater than the ambulance minimum. For the avoidance of doubt, provided that the number of ambulances leased to the ECPG under this agreement exceeds the ambulance minimum, the ECPG shall be entitled to acquire or lease ambulances from any third party notwithstanding that the number of Vehicles leased to the ECPG in terms of this agreement does not exceed the minimum vehicle quantity;

8.1.3.3

be obliged at all times during the currency of this agreement to lease vehicles comprising not less than the minimum vehicle quantity from the contractor and to lease ambulances from the contractor in an amount which is not less than the ambulance minimum, on the basis that as and when the number of –

8.1.3.3.1

Leased Vehicles falls below the minimum vehicle quantity for any reason whatever, the ECPG shall be obliged to lease further vehicles from the contractor so as to ensure that the number of Leased Vehicles leased to the ECPG is not less than the minimum vehicle quantity;

8.1.3.3.2

ambulances leased from the contractor falls below the ambulance minimum for any reason whatever, the ECPG shall be obliged to lease further ambulances from the contractor so as to ensure that the number of ambulances leased to the ECPG is not less than the ambulance minimum.

8.1.4

The ECPG shall accordingly be entitled to –

- 8.1.4.1 acquire ad hoc rental vehicles from any third party, on the basis that the contractor shall not have the exclusive right to supply ad hoc rental vehicles to the ECPG;
- 8.1.4.2 purchase or lease any ambulance from any third party at any time while the number of ambulances leased to the ECPG in terms of this agreement exceeds the ambulance minimum; and
- 8.1.4.3 purchase or lease any other vehicle from any third party at any time while the number of Leased Vehicles exceeds the minimum vehicle quantity.
- 8.1.5 Should the ECPG purchase or lease vehicles from any third party in the circumstances envisaged in clause 8.1.4, then the ECPG shall be entitled to request the contractor to manage the maintenance of such vehicles on terms and conditions agreed between the ECPG and the contractor. Should the ECPG and the contractor fail to reach agreement on the aforesaid terms and conditions then the contractor shall not be obliged to manage the maintenance of such vehicles.

8.2 Supply of Leased Vehicles

The contractor and the ECPG agree that –

- 8.2.1 with effect from the effective date the contractor shall lease to the ECPG, subject to the provisions of clause 8.2.2, all of the current vehicles in terms of FML Agreements as envisaged in the OSA, save as provided herein, for a period of twenty four months commencing on the effective date and terminating at the expiry of the transfer management period;

8.2.2 the contractor shall, within the periods and on the basis recorded in the fleet renewal plan but in any event by not later than 30 June 2010, deliver and lease to the ECPG 1337 new vehicles which will replace 1337 current vehicles which as at the effective date fell outside of the parameters ("the old vehicles") on the basis that –

8.2.2.1 the parties shall together agree the order in which specific old vehicles are to be replaced under the fleet renewal plan having regard to the age and condition of the old vehicles in question. Subject to availability, the parties shall endeavour to ensure that the old vehicles which are the oldest or are in the worst condition are replaced first;

8.2.2.2 notwithstanding to the contrary recorded in this agreement or its annexures and schedules, the contractor shall not be obliged to ensure that the replacement vehicles are white but shall endeavour to do so having regard to the availability of white vehicles from the OEMs;

8.2.2.3 the fleet renewal plan shall be construed as a firm and committed order of the ECPG and the contractor is entitled to place orders for the vehicles recorded in the fleet replacement plan;

8.2.2.4 the ECPG shall be obliged to return the old vehicles to the contractor in accordance with the procedures recorded in schedule 2 to this agreement. The contractor shall not be obliged to replace an old vehicle unless it is returned to the contractor in accordance with the above procedures and the contractor shall not be liable for any failure on its part to meet the time frames recorded in the fleet renewal plan which is attributable to the ECPG's failure to return an old vehicle to the contractor as aforementioned;

8.2.2.5 the ECPG shall not be entitled to refuse to accept delivery of any vehicle which is delivered in accordance with the fleet renewal plan;

8.2.2.6 if the contractor fails to replace any old vehicle by 30 June 2010 (other than in circumstances that are attributable to a failure on the part of the ECPG to comply with any of its obligations in terms of this clause 8.2), the ECPG shall continue to lease the old vehicle in question from the contractor until it is replaced;

8.2.2.7 if the contractor fails to replace any old vehicle by 1 September 2010 (other than in circumstances that are attributable to a failure on the part of the ECPG to comply with any of its obligations in terms of this clause 8.2), the ECPG shall continue to lease the old vehicle in question from the contractor until it is replaced but the contractor shall, with effect from 1 September 2010, pay the ECPG a penalty in regard to the old vehicle in question equal to the greater of either –

8.2.2.7.1 10% of the rental (excluding VAT) that would have been payable for new vehicle which was to have replaced the old vehicle under the rate card attached to this agreement as schedule 14; or

8.2.2.7.2 the difference between the rental (excluding VAT) that would have been payable for new vehicle which was to have replaced the old vehicle per the rate card attached as schedule 14 and the rental (excluding VAT) then currently payable by the ECPG for the old vehicle per the rate card attached to this agreement as schedule 13,

in regard to each calendar month thereafter in which the old vehicle is not replaced with a new vehicle as contemplated in this clause 8.2. The penalty shall be pro-rated for any periods of less than one

calendar month if the new vehicle is delivered at any time during a calendar month following 1 September 2010,

on the basis that each of such additional vehicles will likewise be leased to the ECPG in terms of an FML Agreement, save as provided herein, for a period of twenty four months from the delivery of each such vehicle to the ECPG, provided that the foregoing shall not be construed as extending the period of this agreement beyond the twenty four month transfer management period;

8.2.3

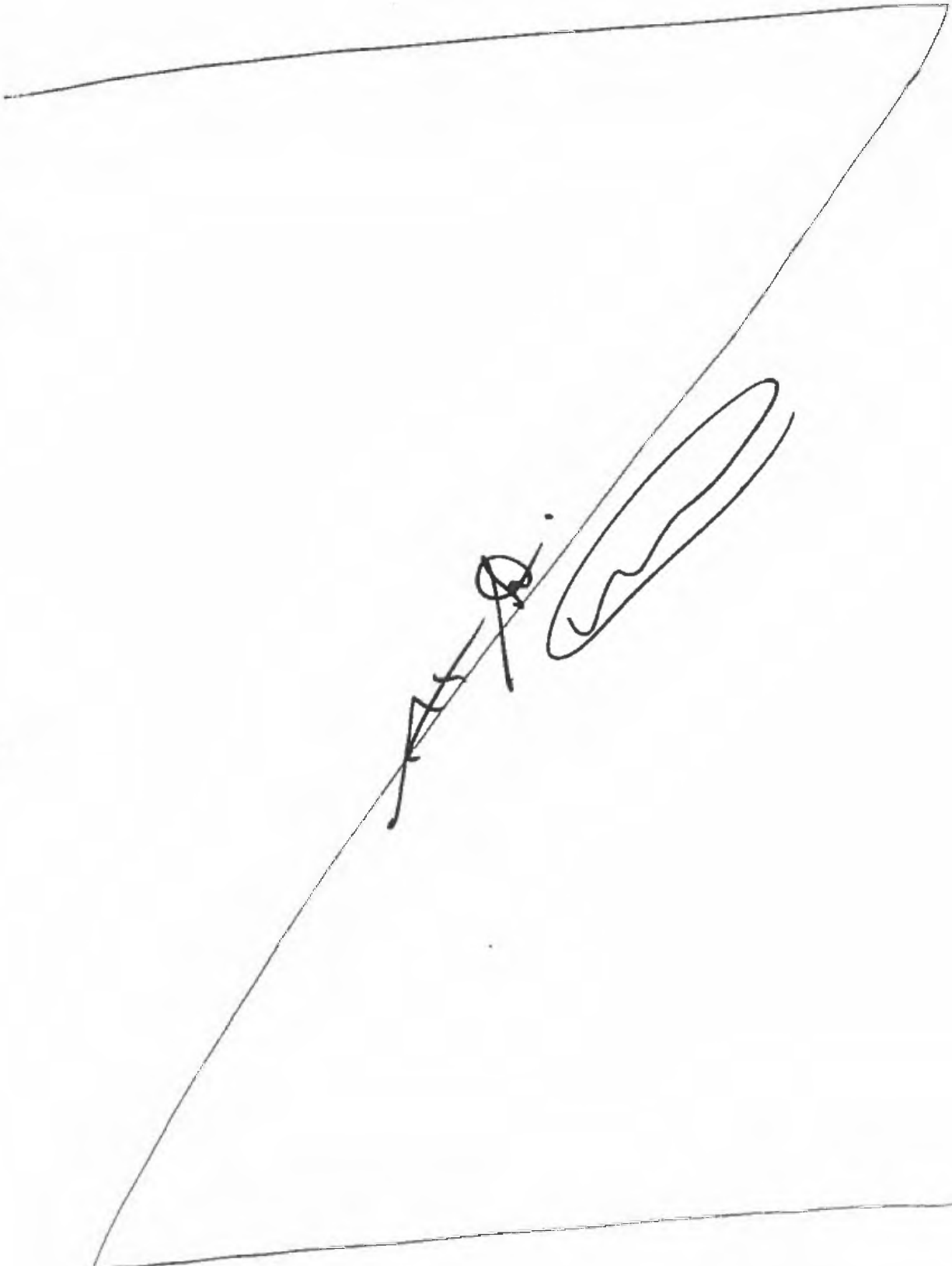
the ECPG shall be entitled to request the contractor to replace current vehicles which are not part of the old vehicles but which fall outside the parameters with a new vehicle. Any such replacement shall be subject to agreement between the parties of a delivery plan for such vehicle and shall be not supplied in priority to either the old vehicles or the vehicles referred to in clause 8.2.4. The new vehicle in question shall be an additional vehicle and, as such, shall be subject to the deemed sale provisions of clause 8.5;

8.2.4

the contractor shall, as soon as practically possible after the effective date but prioritising the replacement of old vehicles under the fleet renewal plan, supply to the ECPG with an additional 264 new vehicles (identified by the ECPG as being required by it), on the basis that provision of such additional vehicles shall be subject to the availability of vehicles from the OEM's, body builders and other relevant suppliers of the additional vehicles. To this end the ECPG shall provide the contractor with written confirmation of the type, model and service line of each of the 264 vehicles to be provided by not later than 31 March 2010 and thereafter provide written orders for the vehicles in question when same are requested by the contractor. Provision of such additional vehicles shall, in respect of each service, commence as soon as all the old vehicles in a particular service line have been replaced as contemplated in clause 8.2.2. Each such additional vehicle shall be leased to the ECPG save as provided herein, in terms of FML Agreements, for a period of twenty four months from the delivery of each such additional vehicle to the ECPG provided that the foregoing shall not be construed as extending



the period of this agreement beyond the twenty four month transfer management period.



[Handwritten signature]

8.3 Bulk Fuel Cards

- 8.3.1 The parties agree that the contractor shall for the duration of the transfer management period make bulk fuel cards available to the ECPG in terms of this agreement on the basis set out in Schedule 10.
- 8.3.2 The ECPG shall be obliged to return to the contractor, by no later than the expiry of the transfer management period, all bulk fuel cards furnished to the ECPG.
- 8.3.3 The contractor shall be entitled to terminate the bulk fuel cards upon expiry of the transfer management period.
- 8.3.4 Should the ECPG fail to ensure that all the bulk fuel cards are returned to the contractor by the expiry of the transfer management period and should any such bulk fuel card be used after the expiry of the transfer management period then, without prejudice to the contractor's other rights in law or in terms of this agreement, the ECPG shall continue to be liable to pay the contractor the amount billed to it by the contractor in respect of all such bulk fuel cards on the basis set out in Schedule 10.

8.4 Ambulances

- 8.4.1 It is recorded that in terms of the transfer agreement it was agreed that –
- 8.4.1.1 twenty eight of the ambulances provided to the ECPG by the contractor in terms of the OSA would be substituted with twenty eight substitute ambulances (“the substitute ambulances”); and



- 8.4.1.2 the ECPG was to ensure that the former new service provider would purchase the substitute ambulances from the contractor on the terms set out in clause 8.2.3 of the transfer agreement.
- 8.4.2 Notwithstanding the provisions of the transfer agreement, the ECPG failed to procure the purchase of the substitute ambulances from the contractor by the former new service provider.
- 8.4.3 The parties agree that each of the substitute ambulances will be deemed to form part of the Leased Vehicles with effect from the date on which they were respectively delivered to the ECPG, on the basis that the ECPG shall be released from its obligations in clause 8.2.3 of the transfer agreement to procure the purchase thereof from the contractor by the former new service provider.
- 8.4.4 The ECPG agrees to pay the contractor for the substitute ambulances with effect from –
- 8.4.4.1 1 November 2009 until 18 December 2009 (which payment shall be made by 28 February 2010) in accordance with the Rate Card referred to in clause 8.8 of the transfer agreement (excluding the insurance costs reflected on such rate card); and
- 8.4.4.2 19 December 2009 until the effective date (which payment shall be made by 28 February 2010) in accordance with the Rate Card which is referred to in clause 8.8 of the Transfer Agreement (including the insurance costs reflected on such rate card);

- 8.4.4.3 the effective date, subject to the provisions of clause 8.11.2, in accordance with the Rate Card which is Schedule 14 to this agreement.
- 8.4.5 The ECPG undertakes to reimburse the contractor with all costs incurred by the contractor in effecting the repairs (occasioned by damage caused to the substitute ambulances between 1 November 2009 and 18 December 2009 (both days inclusive)) identified in Schedule 16) which are to be made to the substitute ambulances in order to restore them to a proper and efficient working condition. The costs incurred by the contractor in effecting these repairs shall be paid by the ECPG to the contractor as and when they are incurred by the contractor. In respect of each new ambulance written off by the contractor or stolen, which new ambulance was stolen or damaged between 1 November 2009 and 18 December 2009 (both days inclusive), the ECPG shall pay the contractor R320 000 plus VAT thereon by 28 February 2010.
- 8.4.6 Should any of the substitute ambulances have been written off, lost, stolen or damaged during the period commencing on 19 December 2009 and terminating on 31 December 2009 (both days inclusive) then the ECPG shall, if such ambulance is –
- 8.4.6.1 repaired by the contractor, be obliged to pay the contractor the first R10 000's worth of costs incurred by the contractor in relation to effecting such repairs; or
- 8.4.6.2 written off by the contractor or lost or stolen, be obliged to pay the contractor R10 000 per new ambulance so written off, lost or stolen.
- 8.4.7 In order to assist the ECPG in managing the ambulances leased to it by the contractor, the contractor shall –

- 8.4.7.1 assist the ECPG in determining which ambulances ought to be re-allocated between their operators in order to reduce instances of over or under utilisation of same. Actual implementation of any re-allocation shall be the responsibility of the ECPG;
- 8.4.7.2 fit on-board computers to any new ambulances supplied by the contractor to the ECPG (at the contractors cost) to allow better usage management of individual ambulances;
- 8.4.7.3 on a monthly basis along with the other reports to be provided to the ECPG under this agreement, provide the ECPG with the following additional reports regarding the above ambulances –
- 8.4.7.3.1 an allocation report recording the specific area or user to which the ambulances have been allocated by the ECPG;
- 8.4.7.3.2 a mileage report detailing the distance travelled by each of the ambulances in the month in question, to the extend that the ECPG has, at its own cost, fitted on-board computers to ambulances other than new ambulances; and
- 8.4.7.3.3 a cost report detailing the costs for the month in question incurred in providing the ambulances. This report will detail the costs per ambulance and per cost centre;
- 8.4.7.4 undertake preventative maintenance in regard to the above ambulances based on a schedule to be agreed between the parties detailing both the nature and frequency of maintenance inspections to be undertaken in regard to the ambulances. This plan will include daily checks by the drivers and transport managers of the ambulances in question and a procedure for undertaking regular

checks by vehicle inspectors from time to time and at workshops when the ambulances are serviced or maintenance;

8.4.7.5 together with the ECPG undertake a study to determine the feasibility of providing dedicated service and maintenance repair centres for the ambulances. Implementation of any proposal resulting from this study shall be subject to agreement between the parties;

8.4.7.6 together with the ECPG develop an education and driver training program for drivers of the ambulances and, subject to agreement between the parties in regard thereto, implement same. The ECPG shall be responsible for the actual training costs incurred in this regard;

8.4.7.7 provide the ECPG with information regarding national norms in regard to ambulances per head of population to assist the ECPG in budgeting additional amounts for the procurement of ambulances to ensure better compliance by the ECPG with these national norms;

8.5 Deemed Sale of acquired vehicles

8.5.1 The parties agree that, with effect from the first day ("the sale date") immediately succeeding the expiry of the transfer management period =

8.5.1.1 each FML Agreement in respect of the additional vehicles shall terminate notwithstanding the period thereof; and

8.5.1.2 the contractor shall be deemed to have sold to the ECPG, which shall be deemed to have purchased, each of the acquired vehicles (other than tractors and Heavy Vehicles) and each of the substitute

ambulances (to the extent that they are still leased to the ECPG), subject to the provisions of clause 8.5.2, for the acquisition price, plus VAT thereon at the applicable rate, on a voetstoots basis, without any warranties other than those given by the OEM (which the ECPG shall exercise against the OEM), whether express or implied in regard to the relevant acquired vehicle.

8.5.2 Should the contractor fail to ensure that the damage caused by accident to any acquired vehicle prior to the sale date is repaired, then the price payable therefor by the ECPG shall be reduced by an amount equivalent to the cost of repair thereof, provided that if the failure to repair any such damage by the contractor is due to the ECPG breaching any of its obligations in terms of this agreement (including the failure by the ECPG to have timeously completed and/or lodged the required claim documentation and/or meet any other insurance requirement) then the price payable therefor shall not be subject to any such reduction.

8.5.3 Should any dispute arise between the parties as to the calculation of the "cost of repair" of the relevant vehicle for the purposes of clause 8.5.2, such dispute shall be referred to an independent panel beater the identity of whom is agreed to by the parties (and failing agreement as to the identity of such party within three days after either party requires agreement as to the identity of such party to be reached, to an independent panel beater operating in the Eastern Cape appointed by the President of the Cape Law Society or his successor), who shall determine such dispute acting as an expert and not as an arbitrator and whose decision, save for any manifest error, shall be final and binding on the parties. The costs payable to the expert shall be borne by the parties in equal shares.

8.5.4 The ECPG shall be obliged to pay the contractor the purchase price payable for the acquired vehicles purchased in terms of clause 8.5.1 by not later than 28 February 2012.



8.5.5 All risk of every nature whatever in and to the acquired vehicles shall pass to the ECPG on the sale date (and as such the ECPG shall be liable for all fines incurred by any driver of the acquired vehicles after the sale date). Ownership in and to the acquired vehicles shall pass to the ECPG against full payment by the ECPG to the contractor of the purchase price payable therefor.

8.5.6 The contractor undertakes to deliver to the ECPG, against payment by the ECPG to the contractor of the purchase price payable for each acquired vehicle, such documents as may be necessary to effect transfer thereof. The ECPG shall pay all costs and other amounts necessary to procure the transfer and registration thereof into its name by no later than sixty days after delivery of the aforesaid documents to it. The ECPG shall be responsible for procuring any roadworthy and other necessary certificates and other approvals (and for the payment of all costs payable in order to obtain same) required in order to effect transfer of the acquired vehicles into its name.

8.6 Insurance

8.6.1 It is recorded that -

8.6.1.1 the contractor is currently responsible for the insurance of all the Vehicles;

8.6.1.2 it has been agreed that -

8.6.1.2.1 the cost ("the estimated insurance cost") to be incurred by the contractor in respect of such insurance was been estimated to amount in aggregate to 12% per annum of the Transition Mead & McGrouther trade value of the Leased Vehicles calculated on a monthly basis over the applicable period;

8.6.1.2.2

the actual insurance related costs ("the actual insurance cost") incurred by the contractor in respect of such insurance in respect of the period ("the initial insurance period") commencing on 1 August 2009 and terminating on 31 January 2010 shall only be capable of being determined after 31 January 2010;

8.6.1.2.3

to the extent that the actual insurance cost exceeds the estimated insurance cost for any reason whatsoever, then the ECPG shall be obliged to pay the contractor (upon proof thereof) the amount equivalent to such excess ("the excess insurance amount") plus VAT thereon at the applicable rate.

8.6.1.3

A certificate obtained by the contractor from **Messrs Alexander Forbes** certifying the total insurance related costs incurred by the contractor for the initial insurance period shall be sufficient proof of the matters referred to in clause 8.6.1.2.3.

8.6.1.4

The parties agree that the contractor shall calculate the excess insurance amount prior to 31 March 2010 and such amount shall together with VAT thereon at the applicable rate be paid by the ECPG to the contractor by not later than 30 April 2010.

8.6.1.5

The contractor shall provide insurance in respect of the Vehicles on the basis set out in Schedule 5 to this agreement.

8.6.2

The contractor shall during November 2010 undertake a review of the insurance element of the Rate Cards. The contractor shall be entitled, with effect from 1 February 2011, to increase the insurance element in the Rate Cards by a percentage thereof equivalent to the percentage increase in the

premiums charged to the contractor in respect of the insurance of the Vehicles by the contractor's insurers or brokers, as the case may be.

8.6.3 The Parties shall on a monthly basis review the statistics on insurance claims and reported insured events.

8.7 Service Levels

8.7.1 Schedule 4 to the OSA shall, with effect from the effective date, be substituted with and replaced by the provisions of Schedule 4 to this agreement.

8.7.2 Notwithstanding the provisions of clause 8.7.1 the obligations of the contractor in respect of Service Levels set out in Schedule 4 to this agreement shall (unless otherwise specifically provided in Schedule 4) –

8.7.2.1 not apply to any Leased Vehicle which is a -

8.7.2.1.1 Heavy Vehicle and which as at the effective date has an odometer reading of more than 250 000 kilometres or is older than five years;

8.7.2.1.2 LDV or ambulance and which as at the effective date has an odometer reading of more than 180 000 kilometres or is older than five years;

8.7.2.1.3 Light Vehicle which as at the effective date has an odometer reading of more than 150 000 kilometres or is older than five years;

- 8.7.2.2 cease to apply to any Leased Vehicle which is a -
- 8.7.2.2.1 Heavy Vehicle with effect from the date on which the odometer reading of such Leased Vehicle reaches 250 000 kilometres or becomes older than five years;
- 8.7.2.2.2 LDV or ambulance with effect from the date on which the odometer reading of such LDV or ambulance reaches 180 000 kilometres or becomes older than five years;
- 8.7.2.2.3 Light Vehicle with effect from the date on which the odometer reading of such Light Vehicle reaches 150 000 kilometres or becomes older than five years.
- 8.7.3 Notwithstanding the provisions of clause 8.7.2 and while the contractor is not obliged to adhere to the Service Levels set out in Schedule 4 to this agreement in respect of any Leased Vehicle which is outside the parameters, the contractor agrees to use reasonable endeavours to adhere to the Service Levels set out in Schedule 4 to this agreement in respect of any Leased Vehicle which is outside the parameters.
- 8.7.4 For the purposes of this agreement (including without limitation Schedule 4 to the OSA) –
- 8.7.4.1 “major component failures” shall mean any failure related to –
- 8.7.4.1.1 the engine;

8.7.4.1.2 the differential;

8.7.4.1.3 the gearbox;


8.7.4.1.4 the suspension;

8.7.4.1.5 the prop shaft;

8.7.4.1.6 the cylinder head;

8.7.4.1.7 body damage,

of the relevant Leased Vehicle;

8.7.5 Subject to clause 8.7.7, all Leased Vehicles which are outside the parameters as at the effective date or which cease to be within the parameters after the effective date shall remain as part of the fleet leased to the ECPG in terms of this agreement but the ECPG shall be responsible for all costs incurred in relation to and/or associated with and/or attributable to major component failures in regard to these Leased Vehicles. 

8.7.6 Should either the contractor or the party to whom any Leased Vehicle is sent for maintenance, servicing or repair determine that the Leased Vehicle has suffered a major component failure, then –

8.7.6.1 the contractor shall notify the ECPG thereof;

8.7.6.2 should the ECPG provide the contractor with an order number in respect thereof, the Contractor shall procure the repair or replacement thereof, on the basis that the ECPG shall be liable for all costs associated therewith; or

8.7.6.3 should the ECPG fail to provide the contractor with an order number in respect thereof, then the contractor shall not procure the repair or replacement thereof but the contractor shall be entitled to continue to bill the ECPG, which shall remain liable, for the Rental payable in respect of such Leased Vehicle for the duration of the FML Agreement in respect thereof.

8.7.7 The provisions of clauses 8.7.5 and 8.7.6 shall not apply to any old vehicle which is within 60 days of replacement as recorded in the fleet renewal plan.

8.8 Premises

8.8.1 The contractor currently leases two properties ("the properties") located in East London and Umtata respectively from the ECPG in terms of existing lease agreements with the ECPG (such leases hereinafter being referred to as "the leases").

8.8.2 The ECPG hereby extends the duration of the leases for an additional period terminating on the expiry of the transfer management period on mutatis mutandis the same terms and conditions as that contained in the leases.

8.8.3 The parties record that the properties require repairs and improvements having regard to health and safety considerations and operational requirements. The nature and extent of and costs to be incurred in respect of such repairs and improvements shall be agreed between the contractor and the ECPG prior to any of them being effected

8.8.4 The ECPG shall be entitled to utilise portion of the premises in East London for its own purposes; provided that –

8.8.4.1 the extent of the portion in question shall be subject to agreement with the contractor;

8.8.4.2 the use by the ECPG of the agreed portion shall not interfere with the day to day operations of the contractor.

8.8.5 With effect from the effective date the rentals payable by the contractor to the ECPG for the properties shall be –

8.8.5.1 R20 000.00 per month (excluding VAT) in regard to the East London property; and

8.8.5.2 R16 000.00 per month (excluding VAT) in regard to the Umtata property.

8.8.6 It is recorded that as at the signature date the ECPG is storing scrap vehicles and equipment at the East London property referred to in clause 8.8.1. The ECPG shall be obliged to remove the aforesaid scrap vehicles and equipment from such property and to transfer same to another location (other than the properties) at its cost by not later than 12 March 2010.

8.9 **Ad Hoc Vehicle rentals**

8.9.1 The ECPG is entitled to lease vehicles on an ad hoc basis from any third party including the contractor. If the ECPG wishes to hire any Ad Hoc Vehicles (within the Province) from the contractor (in circumstances where the contractor is able to provide same to the ECPG), they shall be hired on the terms and conditions recorded in SS3 – Ad Hoc Vehicles in Schedule 4 to this agreement.

8.9.2 All Ad Hoc Vehicles supplied to the ECPG shall be insured through the supplier of the Ad Hoc Vehicle utilised by the contractor and the Rentals payable by the ECPG for the Ad Hoc Vehicles will be increased to include an additional amount equivalent to that necessary to compensate the contractor for the insurance premium payable by the contractor to the relevant supplier.

8.9.3 The ECPG shall be responsible for ensuring that all related requirements of the suppliers of the Ad Hoc Vehicles are complied with in relation to the occurrence of an insurance event.

8.10 Rate Cards

8.10.1 For the Services and Vehicles provided to the ECPG by the contractor, the ECPG shall pay the contractor the fees set out in the applicable Rate Card. Notwithstanding the provisions of clause 1.2.28 of the OSA, each reference to "Rate Card" shall, with effect from the effective date, mean the list of rates and vehicle prices applicable to the Vehicles, as set out in Schedule 13, Schedule 14 or Schedule 18, whichever is applicable, as amended pursuant to the provisions hereof from time to time.

8.10.2 The Rate Card applicable to all current vehicles shall, with effect from the effective date, be the rate card attached as Schedule 13 to this agreement.

8.10.3 The Rate Card applicable to all additional vehicles shall be the rate card attached as Schedule 14 to this agreement.

8.10.4 The Rate Card applicable to all Ad Hoc Vehicles shall be the rate card attached as Schedule 18 to this agreement.

8.11 **Payment Provisions**

8.11.1 The ECPG shall also be liable for –

8.11.1.1 the cost of fuel on the basis recorded in Schedule 10;

8.11.1.2 all loss suffered by the contractor as a result of fraud, Abuse of Vehicles or theft of fuel committed by its Personnel, provided same is established in terms of Schedule 15.

8.11.2 The parties shall during January 2011 undertake a pricing review from which pricing adjustments, if necessary, will be determined for the balance of the transfer management period. The pricing review shall be based on CPI (other than in regard to the pricing of vehicles at fitments which shall be at their relevant cost). The contractor shall by 30 November 2010 provide the ECPG with written details of any increases proposed by the contractor to take effect from 1 February 2011, together with detailed explanations and justifications for such proposed increases, including analyses of related increases or reductions in the contractor's costs, market conditions and movements in any relevant indices (e.g. CPI and foreign currency exchange rates). The parties shall meet to discuss such proposals and attempt, by no later than 1 February 2011, to agree on the proposed increases. Should the parties be unable to agree on any increases the contractor shall, with effect from 1 February 2011, be entitled to increase its rate by CPI (other than in regard to the pricing of vehicles at fitments which shall be at their relevant cost).

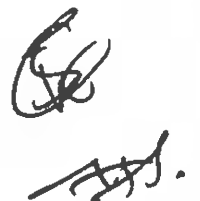
- 8.11.3 Save as provided in clause 8.6.2, insurance premiums included in the Rate Cards will be fixed until the expiry of the transfer management period.
- 8.11.4 The interest used to calculate the Rentals in the Rate Cards is the Prime Rate. The interest rate applicable to all Leased Vehicles shall be variable and based on the Prime Rate. The contractor will pass through the full net effect of any change in the Prime Rate.
- 8.11.5 As and when the pricing applicable to vehicles supplied under RT57 changes after the effective date, the capital value used to calculate the Rentals in the Rate Cards shall forthwith also be adjusted to take account of such change and shall apply to all additional vehicles supplied to the ECPG after such change.
- 8.11.6 The fees payable by the ECPG on a monthly basis comprise the following elements –
- 8.11.6.1 Rentals in respect of all Vehicles leased by the ECPG from the contractor;
 - 8.11.6.2 fuel costs;
 - 8.11.6.3 toll fees; and
 - 8.11.6.4 any fines or Abuse amounts.

- 8.11.7 The contractor shall by the 25th day of each month, or the first Business Day prior thereto where same falls on a day which is not a Business Day, provide the ECPG with valid tax invoices, in the format and containing the particulars required by law, detailing all charges –
- 8.11.7.1 relating to advance payments for the ensuing month;
- 8.11.7.2 all fees, charges or refunds/credits arising during the preceding month, with a detailed breakdown as to the nature and extent of such fees and charges.
- 8.11.8 With a view to ensuring that the contractor is paid all amounts due to it in terms of this agreement when same are due, the ECPG agrees that within ten days after receipt of an invoice by the ECPG as contemplated in clause 8.11.7, it shall ensure that the accounts committee meets to reconcile such invoice.
- 8.11.9 The ECPG shall be obliged to pay the contractor the aggregate, reconciled amounts reflected on an invoice by no later than the thirtieth day from the date of receipt by the ECPG of the invoice in question.
- 8.11.10 Should the –
- 8.11.10.1 ECPG fail to pay to the reconciled amount referred to in clause 8.11.9 (“the outstanding amount”) the contractor shall be entitled without prejudice to its rights at law or in terms of this agreement to refer the matter to the Head of Department of Roads and Transport of the ECPG (“HOD”);
- 8.11.10.2 ECPG fail to pay the outstanding amount to the contractor within seven days after the matter has been referred to the HOD the



contractor shall be entitled without prejudice to its rights at law or in terms of this agreement to refer the matter to the Member of the Executive Committee of the ECPG responsible for Treasury ("MEC").

- 8.11.11 The Provincial Treasury of the ECPG has agreed to, and shall, facilitate prompt payment by the ECPG of all amounts owing to the contractor under this agreement.
- 8.11.12 Should any dispute arise with regard to any charge, such dispute shall be resolved between the parties within thirty days of the date of receipt of the invoice by the ECPG, failing which the ECPG shall pay the disputed amount to the contractor, provided that should such dispute ultimately be resolved in favour of the ECPG, the contractor shall repay such amount to the ECPG within three days of the resolution of the dispute, together with interest thereon at the Prime Rate plus two and a half percent calculated from the date of payment to the date of repayment.
- 8.11.13 All payments due by the ECPG shall be made via electronic funds transfer to the contractor's account, as set out in Schedule 6 to this agreement, free of deduction or set off, or such other banking account within the RSA as the contractor may nominate from time to time.
- 8.11.14 If any amount payable by either party is not paid on the due date for payment thereof then, in addition and without prejudice to any other remedies, the amount of the payment or any balance outstanding from time to time shall bear interest at the Prime Rate plus two and a half percent (compounded monthly in arrears) from the date it falls due until it is discharged in full.
- 8.11.15 All amounts payable are stipulated inclusive of VAT at the prescribed rate unless expressly stated otherwise.



8.11.16 The FML Agreements and associated pricing shall be based on (i) Leased Vehicles (other than specialised vehicles) travelling 4 000 kilometres per month (ii) specialised vehicles travelling 7 000 kilometres per month; and (iii) tractors being used for 176 hours per month. A charge equivalent to the excess kilometre/hour rate specified in the relevant Rate Card shall be levied by the contractor for –

8.11.16.1 distances travelled by Leased Vehicles (other than specialised vehicles) in excess of 4 000 kilometres per month

8.11.16.2 distances travelled by specialised vehicles in excess of 7 000 kilometres –per month; and

8.11.16.3 hours utilised in excess of 176 hours per month in respect of tractors,

as the case may be.

8.12 Minimum Pricing Commitment

8.12.1 Subject to clause 8.12.2, with effect from the date of delivery of the last of the 264 vehicles referred to in clause 8.2.4 (“the up-fleet vehicles”) the ECPG guarantees to the contractor that at all times for the duration of the transfer management period the number of Leased Vehicles leased to it by the contractor in terms of this agreement shall not be less than 2 888 Vehicles.

8.12.2 Having regard to the provisions of clause 8.12.1 the ECPG agrees that, with effect from the date of delivery of the last of the up-fleet vehicles, the Rentals payable by the ECPG to the contractor in respect of each of the Leased Vehicles shall be increased by an amount determined in accordance with the provisions of Schedule 19 during each month in which the number

of Leased Vehicles leased to the ECPG in terms of this agreement is less than 2 888 and, as such, the ECPG shall in each such month be obliged to pay such increased Rentals.

8.12.3 Notwithstanding the foregoing if the shortfall has been caused by the failure of the contractor or the suppliers to deliver any vehicles ordered by the contractor on the due date for delivery thereof, then for the purposes of calculating the number of Vehicles –

8.12.3.1 leased to the ECPG in terms of Schedule 19, such vehicles shall be included in the calculation; and

8.12.3.2 to which the penalty amount is to be applied in terms of Schedule 19, such vehicles shall be excluded.

8.12.4 If –

8.12.4.1 the contractor is prohibited from delivering any up-fleet vehicle; or

8.12.4.2 the delivery of any up-fleet vehicle is delayed beyond the intended delivery date of same as contemplated in clause 8.2.4,

as a result of any failure on the part of the ECPG to comply with its obligations under this agreement, then the 264 fleet-up vehicles referred to in clause 8.12.1 shall be reduced by the number of late or delayed vehicles in question and the guaranteed fleet provisions of clause 8.12 shall apply with effect from the date of delivery of the last of such reduced number of fleet-up vehicles.

8.13 The Fleet Wind Down

8.13.1 During the period commencing on the effective date and terminating on 31 August 2011 (both days inclusive) the contractor shall, save as otherwise agreed, replace all Leased Vehicles which are the subject matter of a destruction event with new vehicles.

8.13.2 After 31 August 2011, any Leased Vehicle that is subject to a destruction event (a "destroyed vehicle") will be dealt with as follows –

8.13.2.1 the ECPG and the contractor shall meet and jointly agree whether the destroyed vehicle shall be replaced and, if so, whether the destroyed vehicle will be replaced by either a used vehicle which is within the parameters (a "parameter vehicle") or a new vehicle. The parties shall meet and reach agreement within a period of no more than 5 (five) Business Days of the relevant destruction event,

8.13.2.2 in reaching agreement as contemplated above the parties shall act in good faith and in a commercially reasonable manner having regard to the following –

8.13.2.2.1 the capital budget of the ECPG, both in regard to the ECPG's ability to comply with its obligations under clause 8.5 in regard to a new vehicle and its ability to purchase a new vehicle for itself outside the terms of this agreement;

8.13.2.2.2 the operational needs of the department which was using the destroyed vehicle;

8.13.2.2.3

the availability of a used vehicle which is within the parameters to replace the destroyed vehicle, having regard to, amongst others, whether any such vehicle is available and, if so, having regard to the purchase price, operational condition and odometer reading of the proposed parameter vehicle; and

8.13.2.2.4

the rental what will be charged by the contractor for the proposed parameter vehicle;

8.13.2.3

if –

8.13.2.3.1

the parties agree that the destroyed vehicle is to be replaced by a new vehicle, the contractor shall supply the ECPG with a new vehicle. The new vehicle shall be –

8.13.2.3.1.1

leased to the ECPG save as provided herein, in terms of an FML Agreement, for a period of twenty four months from the delivery of new vehicle to the ECPG provided that the foregoing shall not be construed as extending the period of this agreement beyond the twenty four month transfer management period; and

8.13.2.3.1.2

subject to the provisions of clause 8.5;

8.13.2.3.2

the parties agree that the destroyed vehicle is to be replaced by a parameter vehicle, the contractor shall supply the ECPG with the parameter vehicle. The parameter vehicle shall –

- 8.13.2.3.2.1 be leased to the ECPG save as provided herein, in terms of an FML Agreement, for a period commencing on the date of its delivery to the ECPG and terminating on the last day of the transfer management period for the rental agreed between the parties as part of the process recorded in clause 8.13.2.2; and
- 8.13.2.3.2.2 not be subject to the provisions of clause 8.5;
- 8.13.2.3.3 the parties agree that the destroyed vehicle is not to be replaced as contemplated above or if the parties fail to reach agreement within the period recorded in clause 8.13.2.1 –
- 8.13.2.3.3.1 the contractor shall not be obliged to provide a replacement vehicle;
- 8.13.2.3.3.2 the ECPG shall be entitled to procure a replacement vehicle from the new service provider or any other third party and/or to purchase such replacement vehicle itself;
- 8.13.2.3.3.3 the ECPG shall be entitled to request the contractor to manage the maintenance of any vehicle purchased or leased by the ECPG on the basis recorded in clause 8.1.5; and
- 8.13.2.3.3.4 the provisions of clause 8.12 shall be applied.

8.14 For the purposes of clarity it is recorded that all additional vehicles shall be leased to the ECPG in terms of an FML Agreement as envisaged in the OSA for a period of twenty four months commencing on the date of delivery thereof to the ECPG; provided that the foregoing shall not be construed as extending the period of this agreement beyond the twenty four month transfer management period.

8.15 Transition of Services and Current Vehicles

8.15.1 By no later than 31 July 2011, the ECPG shall inform the contractor in writing whether it intends to appoint a new service provider to render the Services with effect from termination of the transfer management period, failing which, by no later than 31 August 2011, the parties shall mutually develop and agree a detailed transfer management plan to ensure the smooth and uninterrupted transition of the Services to the ECPG with effect from the end of the transfer management period. The detailed transfer management plan shall include agreement on the matters recorded in clause 8.16.

8.15.2 If the ECPG intends appointing a new service provider and informs the contractor of same as contemplated in clause 8.15.1, the matters recorded in clause 8.16 shall be agreed between the ECPG and the contractor by not later than 30 September 2011 having regard to the matters referred to in clause 8.15.3.

8.15.3 The ECPG shall procure that the new service provider shall –

8.15.3.1 meet with the contractor not later than 31 August 2011 and disclose to the contractor, in such detail as the contractor may reasonably require, its strategies and plans with regard to the replenishment of vehicles required by the ECPG over and above 2 888 Vehicles, if applicable, and to co-ordinate the orderly return to the contractor of the current vehicles and the replacement thereof with vehicles supplied by the new service provider after the expiry of the transfer management period;

- 8.15.3.2 provide the contractor, during each month after 1 November 2011, with a comprehensive monthly report indicating the details of all new vehicles which the new service provider has furnished to the ECPG during the month in respect of which the report is furnished.
- 8.15.4 The ECPG shall be obliged, if required by the contractor, to provide the contractor with a certificate prepared by auditors appointed by the parties jointly certifying that the monthly reports referred to in clause 8.15.3.2 are true and correct. The costs incurred in this regard shall form part of the transfer management costs referred to in clause 8.16 which are recoverable by the contractor from the ECPG.
- 8.15.5 The contractor shall after 1 November 2011 provide the new service provider with such information as the new service provider may reasonably require relating to the services provided by the contractor to the ECPG in terms of this agreement in order to enable the new service provider to commence the provision of such services to the ECPG after the expiry of the transfer management period.
- 8.15.6 Schedule 2 to this agreement sets out the procedures ("the return procedures") to be adopted by the new service provider (if relevant) and the ECPG in relation to the return of the current vehicles to the contractor after the expiry of the transfer management period, which procedures the ECPG undertakes to procure are adhered to by itself and the new service provider.
- 8.15.7 The ECPG shall ensure that no vehicle is delivered to it by the new service provider or any third party, in circumstances where such new vehicle is intended to replace a then existing Leased Vehicle unless a destruction event has occurred in relation to such Leased Vehicle and the contractor has been advised thereof in writing by the ECPG and declined to provide the contractor with an additional vehicle in respect thereof as contemplated in clause 8.13.2.

8.15.8 The contractor shall be entitled after the expiry of the transfer management period and at all times thereafter to continue to invoice the ECPG in respect of each current vehicle until such time as a destruction event has occurred in relation to such current vehicle and the contractor has been advised thereof in writing by the ECPG or such current vehicle has been returned to the contractor in accordance with the return procedures.

8.15.9 For the purposes of clarity it is recorded that the ECPG shall –

8.15.9.1 only be entitled to return a current vehicle to the contractor as contemplated in this clause 8.15 on the expiry of the transfer management period; and

8.15.9.2 not be entitled to return any additional vehicle to the contractor as same shall be deemed on the expiry of the transfer management period to have been sold to the ECPG in terms of clause 8.5.

8.15.10 Should the ECPG fail to return any current vehicle ("the specified vehicle") to the contractor on the expiry of the transfer management period (other than in circumstances where a destruction event has occurred in relation to the specified vehicle and the contractor has been advised of any such destruction event in writing by the ECPG), then (without prejudice to the contractor's other rights in law or in terms of this agreement) --

8.15.10.1 the ECPG shall be obliged to continue to pay to the contractor during each month or part thereof during which the specified vehicle is not returned to the contractor or sold by the contractor to the ECPG in terms of clause 8.15.10.2 ("the breach period"), an amount equivalent to the Rental payable by the ECPG in the last month of the transfer management period in respect of the specified vehicle and all other charges leviable by the contractor in terms of this agreement in respect of the specified vehicle as if the FML agreement in respect thereof was still in place; and

8.15.10.2

should the circumstances envisaged in clause 8.15.10 continue after the last day of the third calendar month succeeding the expiry of the transfer management period, the contractor shall have the right to require the ECPG, by notice ("the default notice") in writing, to purchase from it the specified vehicle on the following terms –

8.15.10.2.1

the ECPG shall be deemed to have purchased from the contractor, which shall be deemed to have sold to the ECPG, the specified vehicle, with effect from the date of the default notice, for a purchase price equivalent to the aggregate of) the acquisition price plus Vat thereon at the applicable rate, on a voetstoots basis, without any warranties other than those given by the OEM (which the ECPG shall exercise against the OEM), whether express or implied in regard to the specified vehicle; and

8.15.10.2.2

the ECPG shall be obliged to pay the contractor the purchase price payable for the specified vehicle purchased in terms of clause 8.15.10.2.1 by not later than thirty days after receipt of the default notice; and

8.15.10.2.3

the contractor undertakes to deliver to the ECPG, against payment by the ECPG to the contractor of the purchase price payable for the specified vehicle, such documents as may be necessary to effect transfer thereof. The ECPG shall pay all costs and other amounts necessary to procure the transfer and registration thereof into its name by no later than sixty days after delivery of the aforesaid documents to it. The ECPG shall be responsible for procuring any roadworthy and other necessary certificates and other approvals (and for the payment of all costs payable in order to obtain same)

required in order to effect transfer of the specified vehicle into its name; and

8.15.10.2.4 ownership in and to the specified vehicle shall pass to the ECPG against full payment by the ECPG to the contractor of the purchase price payable therefor; and

8.15.10.3 all risk of every nature whatever in and to the specified vehicle shall pass to the ECPG on the expiry of the transfer management period (on the basis that without derogating from the generality of the foregoing with effect from the expiry of the transfer management period Schedule 4 shall cease to apply, the ECPG shall be liable for all maintenance, service and repair costs relating to the specified vehicle, the insurance of the specified vehicle and all fines incurred by any driver of the specified vehicle).

8.16 **Transfer Management Costs**

8.16.1 Schedule 9 of the OSA records that the contractor is entitled to recover the costs of implementing the transfer management provisions of the OSA.

8.16.2 The contractor waives all claims which it may have against the ECPG in respect of any transfer management costs incurred by it in relation to the scaling down by the contractor of its operations prior to the effective date as contemplated in clause 8.14 of the transfer agreement.

8.16.3 As a result of the contractor agreeing to extend the transfer management period the contractor will incur transfer management costs ("the transfer management costs") during the last three months of the transfer management period which the ECPG shall be obliged to pay to the contractor

as envisaged below. The parties have agreed that the categories of transfer management costs (examples of which appear in clause 8.16.4) will –

8.16.3.1 in circumstances where a new service provider is to be appointed, be discussed and agreed between the ECPG and the contractor by not later than 1 September 2011;

8.16.3.2 in circumstances where the Services are to be transferred to the ECPG, be discussed and agreed between them during preparation of the detailed transfer management plan referred to in clause 8.15.2.

8.16.4 The transfer management costs which are to be recovered (all of which shall be subject to proof and verification) may include, without limitation, all costs incurred in regard to –

8.16.4.1 the leasing by the contractor of any premises in addition to the leased premises in order to effect an orderly handover of Services, which costs shall include the actual rental costs, rates and taxes and water and electricity charges levied by the local authority where applicable;

8.16.4.2 the costs referred to in clause 8.15.4; *auditors fees*

8.16.4.3 the provision of additional security at the additional leased premises referred to in clause 8.16.4.1 and at the properties, which costs shall be the actual costs charged by the relevant security service provider;

8.16.4.4 any additional insurance taken out to adequately insure any returned Vehicles whilst stored at the above premises or during transport to or from the above premises;

- 8.16.4.5 personnel costs associated with staff of either Fleet Africa (Pty) Ltd or its executives involved in the transfer process, calculated and charged on an hourly basis, and which costs will include travel and subsistence costs incurred by these persons, which will be charged at cost;
- 8.16.4.6 costs incurred by the contractor and staff and executives of Fleet Africa (Proprietary) Limited attending at meetings convened for the purposes of managing the transfer process during the transfer management period;
- 8.16.4.7 consulting fees payable to outside specialists including attorneys, auditors and industry experts;
- 8.16.4.8 data and connectivity costs;
- 8.16.4.9 drivers and vehicle collection / recovery costs and fuel costs related thereto; and
- 8.16.4.10 additional technical specialists supplied by Fleet Africa (Proprietary) Limited and any other company which is a member of the Super Group Limited group of companies in regard to specialist skills such as finance, risk, technical and the like, the costs in respect of whom will be agreed and recovered on a time and materials basis; and
- 8.16.4.11 vehicle licence renewal fees which apply to all Leased Vehicles which are paid during the transfer management period but which extend beyond the transfer management period, on the basis that the amount payable by the ECPG shall be a prorated amount thereof



calculated with reference to all licensing periods extending beyond the transfer management period.

8.16.5

The above list is illustrative only and does not prescribe all the categories of transfer management costs which can be recovered. The quantum of the transfer management costs to be incurred in regard to the agreed categories shall be agreed and signed off prior to the expiry of the transfer management period between the head of department of the Department of Roads and Transport and the CEO of Fleet Africa (Proprietary) Limited or their respective authorised representatives. Should the aforesaid parties fail to agree and sign off the transfer management costs as aforesaid prior to the expiry of the transfer management period then notwithstanding anything to the contrary contained in this agreement the contractor shall be entitled to charge the ECPG, which shall be obliged to pay to the contractor, all costs of the nature referred to in clauses 8.16.4.1 to 8.16.4.11 which are certified by the auditors of the contractor as having been actually incurred by the contractor.

8.16.6

The contractor shall be entitled to set off the amounts payable to it under this clause 8.16 against the amounts owing by the contractor to the ECPG as recorded in clause 6.3.

9 INDEMNITY

The ECPG hereby indemnifies the contractor against all loss, liability, costs, damage and expense of every nature whatever (including without limitation attorney costs on the scale as between attorney and own client, disbursements and other charges) incurred by the contractor directly or indirectly as a result of and/or attributable to –

- 9.1 any claim of any nature whatever made against the contractor by any party which participated in any tender process already run or run at any time after the effective date by the ECPG or on its behalf to select a new service provider or any other party, as a result of the conclusion of this agreement or as a result of any procedure or approval required for the conclusion of this agreement not having been properly followed or obtained by the ECPG; and/or
- 9.2 any claim being made by any party that this agreement is unenforceable for any reason whatever, on the basis that the ECPG warrants to the contractor (which warranty shall be deemed to be a material warranty inducing the contractor to enter into this agreement) that the conclusion of this agreement is valid and that the terms of this agreement shall be validly enforceable against the ECPG.

10 DOMICILIUM

For the purposes of clause 27.1 of the OSA treasury chooses the same address as that chosen by the ECPG as a domicilium for all purposes in terms of this agreement.

11 ARBITRATION


- 11.1 Save as otherwise provided herein, should any dispute arise between the parties in connection with -

- 11.1.1** the formation or existence of;
- 11.1.2** the implementation of;
- 11.1.3** the interpretation or application of the provisions of;
- 11.1.4** the parties respective rights and obligations in terms of or arising out of the conclusion, breach or termination of;
- 11.1.5** the validity, enforceability, rectification, termination or cancellation, whether in whole of in part of;
- 11.1.6** any documents furnished by the parties pursuant to the provisions of,

this agreement or which relates in any way to any matter affecting the interests of the parties in terms of this agreement, such dispute shall, unless resolved amongst the parties to the dispute, be referred to and be determined by arbitration in terms of the Rules of the Arbitration Foundation of Southern Africa ("AFSA") and failing any such rules, shall be governed by the arbitration laws in force in the RSA from time to time.

- 11.2** Any party to this agreement may demand that a dispute be determined in terms of this clause 11 by written notice given to the other parties.

- 11.3 This clause 11 shall not preclude any party from obtaining interim relief by way of motion proceedings on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.
- 11.4 The parties hereby consent to the arbitration being dealt with in terms of the expedited Rules of arbitration of AFSA.
- 11.5 The arbitrator shall be, if the matter in dispute is principally -
- 11.5.1 a legal matter, a practising advocate or attorney or retired judge of at least fifteen years standing;
- 11.5.2 an accounting matter, a practising chartered accountant of at least fifteen years standing;
- 11.5.3 any other matter, any independent person,
- agreed upon between the parties to the dispute.
- 11.6 Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within seven days after the arbitration is demanded, the matter shall be deemed to be a legal matter.
- 11.7 Should the parties fail to agree on an arbitrator within fourteen days after the giving of notice in terms of clause 11.2, any of the parties shall be entitled to request the Registrar for the time being of AFSA to make the appointment during the ensuing seven day period, and who, in making the appointment, shall have regard to the nature of the dispute and the parties' requirement for a speedy arbitration.



Preference shall, in relation to the appointment of the arbitrator, be given to nominees of the parties.

11.8 The arbitration shall take place in the Eastern Cape Province or in such other place as is mutually agreed to by the parties, with only the parties and their representatives being present.

11.9 The arbitration shall be determined in accordance with the provisions of South African law and the parties submit to South African jurisdiction for the purpose of this arbitration.

11.10 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of the court referred to in clause 11.11 at the instance of any of the parties to the dispute.

11.11 The parties hereby consent to the jurisdiction of the Eastern Cape High Court, Grahamstown in respect of the proceedings referred to in clause 11.3 and/or clause 11.10.

11.12 The parties agree to keep the arbitration including the subject-matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order to be made in terms of clauses 11.3 and 11.10.

11.13 The provisions of this clause 11 -

11.13.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and

11.13.2 are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.

11.14 The parties agree that the written demand by any party in terms of clause 11.2 that the dispute be submitted to arbitration, is deemed to be a legal process for the purpose of interruption of extinctive prescription in terms of the Prescription Act, Act 68 of 1969.

12 BREACH

12.1 Save as otherwise provided herein, should the -

12.1.1 ECPG commit a breach of any material provision of this agreement and fail to remedy such breach within fourteen days after receiving written notice from the contractor requiring the remedy of such breach, then the contractor shall be entitled, without prejudice to the contractor's other rights in law, to cancel this agreement or to claim immediate specific performance of all of the ECPG's obligations whether or not due for performance, in either event without prejudice to the contractor's right to claim damages;

12.1.2 contractor commit a breach of any provision of this agreement and fail to remedy such breach within fourteen days after receiving written notice from the ECPG requiring the contractor to remedy such breach, then the ECPG shall be entitled, without prejudice to the ECPG's other rights in law, to cancel this agreement or to claim immediate specific performance of all of the contractor's obligations whether or not due for performance, in either event without prejudice to the ECPG's right to claim damages.

12.2 Notwithstanding anything to the contrary contained in this agreement should the ECPG fail to pay the contractor any amount payable pursuant to the provisions of this

agreement on the due date for payment thereof (including any amount contemplated in clause 6.1), then without prejudice to the contractor's other rights in law or in terms of this agreement the –

- 12.2.1 contractor shall be entitled to forthwith cancel this agreement without notice to the ECPG; and
- 12.2.2 ECPG shall be obliged to pay the contractor as a genuine pre-estimate of the liquidated damages which the contractor shall be deemed to have suffered as a result thereof, an amount equivalent to the aggregate of all future amounts which would, but for the cancellation of this agreement, have been payable by the ECPG to the contractor for the then remaining period of the transfer management period. For the aforesaid purposes it shall be assumed that the number of Vehicles leased to the ECPG by the contractor as at the date of termination of this agreement would have remained leased to the ECPG until the last day of the transfer management period; and
- 12.2.3 ECPG shall be obliged to pay the contractor all costs incurred by the contractor in procuring the return to the contractor of all Vehicles.
- 12.3 Notwithstanding anything to the contrary contained in this agreement for so long as any amount owing by the ECPG to the contractor in terms of this agreement is overdue and remains outstanding the contractor shall –
- 12.3.1 not be obliged to comply with the Service Levels; and
- 12.3.2 be entitled to withhold and/or suspend the provisions of Services to the ECPG.

- 12.4 Any cancellation of this agreement pursuant to the provisions of this clause 12 shall operate as a cancellation as between all the parties of this agreement.
- 12.5 Notwithstanding 12.1.2, should the contractor commit any breach of the provisions of Schedule 4 then the ECPG shall not be entitled to cancel this agreement as a result thereof on the basis that -the ECPG's sole remedy therefor shall be –
- 12.5.1 by written notice to the contractor, to require the contractor, who shall be obliged to do so, to :
- 12.5.1.1 provide all such additional resources as may be necessary to perform the Services in accordance with the Service Levels as early as practicable thereafter and at no additional charge to the ECPG; and
- 12.5.1.2 promptly remedy any failure or re-perform any non-conforming Service at no additional charge to the ECPG; and
- 12.5.2 the right to obtain an order for specific performance; or
- 12.5.3 the recovery of the actual and direct damages it may have suffered as a result thereof.
- 12.6 Should this agreement be cancelled as a result of any breach of the provisions hereof by the ECPG, then without prejudice to the contractor's other rights in law or in terms hereof (and in addition to the amounts payable in terms of clause 12.2.2), the contractor shall be entitled to require the ECPG, by notice ("the breach notice") in writing, to purchase from it and the ECPG shall be deemed to have so purchased, all of the Leased Vehicles (being all the current vehicles and all the additional vehicles leased to the ECPG as at the date of the breach notice) ("the designated vehicles") on the following terms –

- 12.6.1 the ECPG shall be deemed to have purchased from the contractor, which shall be deemed to have sold to the ECPG, each designated vehicle, with effect from the date of the breach notice, for a purchase price equivalent to the acquisition price plus Vat thereon at the applicable rate, on a voetstoots basis, without any warranties other than those given by the OEM (which the ECPG shall exercise against the OEM), whether express or implied in regard to the designated vehicles;
- 12.6.2 the ECPG shall be obliged to pay the contractor the purchase price payable for the designated vehicles purchased in terms of clause 12.6.1 by not later than thirty days after receipt of the breach notice;
- 12.6.3 all risk of every nature whatever in and to the designated vehicles shall pass to the ECPG on the date of the breach notice (on the basis that without derogating from the generality of the foregoing with effect from the date of the breach notice, Schedule 4 shall cease to apply, the ECPG shall be liable for all maintenance, service and repair costs relating to the designated vehicles, the insurance of the designated vehicles and all fines incurred by any drivers of the designated vehicles). Ownership in and to the designated vehicles shall pass to the ECPG against full payment by the ECPG to the contractor of the purchase price payable therefor; and
- 12.6.4 the contractor undertakes to deliver to the ECPG, against payment by the ECPG to the contractor of the purchase price payable for the designated vehicles, such documents as may be necessary to effect transfer thereof. The ECPG shall pay all costs and other amounts necessary to procure the transfer and registration thereof into its name by no later than sixty days after delivery of the aforesaid documents to it. The ECPG shall be responsible for procuring any roadworthy and other necessary certificates and other approvals (and for the payment of all costs payable in order to obtain same) required in order to effect transfer of the designated vehicles into its name.

13 JURISDICTION

Save as otherwise provided herein, the parties hereby consent to the non-exclusive jurisdiction of the Eastern Cape High Court, Grahamstown in respect of any action or legal proceedings which may arise out of or in connection with this agreement, its interpretation, validity or determination hereof.

14 COUNTERPARTS

This agreement -

14.1 may be executed in separate counterparts none of which need contain the signature of all the parties, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one agreement;

14.2 shall be valid and binding upon all the parties hereto, notwithstanding that one or more of the parties may have signed a copy thereof and whether or not such copy contain the signature of any other party.

15 GENERAL

15.1 This document constitutes the sole record of the agreement between the parties in relation to the subject matter hereof.

15.2 No party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This agreement superseded and replaces all prior commitment, undertakings or representations, whether oral or written, between the parties in respect of the subject matter hereof.

- 15.3 No addition to, novation variation, or agreed cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of the parties.
- 15.4 No indulgence which any party may grant to any other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof and who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future) save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
- 15.5 Without prejudice to any other provision of this agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator or trustee, of any party, shall be bound by this agreement.
- 15.6 No party shall be entitled to cede, assign or delegate, transfer or otherwise dispose of any of its rights, obligations, interest or benefits in terms of this agreement without the prior written consent of the other parties.
- 15.7 Any amount payable by any party to any other in terms of this agreement shall be paid in cash and without withholding, set off, bank charges or other deduction of any nature whatsoever.

16 **COSTS**

Each of the parties shall pay the costs respectively incurred by them in connection with the negotiation, drafting, preparation and execution of this agreement.