



# **GAUTENG PROVINCE**

EDUCATION  
REPUBLIC OF SOUTH AFRICA

## **PROVISIONING OF NUTRITION FOR SECONDARY SCHOOLS IN GAUTENG AGREEMENT**

Between

**THE GAUTENG DEPARTMENT OF EDUCATION**

("hereinafter referred to as GDE ")

**Represented by: Mr Boy Ngobeni**

**In his capacity as Head of Department (GDE)**

**Duly authorised thereto**

And

**GTL FOOD MANUFACTURERS AND DISTRIBUTORS (PTY) LTD.**

**(Registration No.: 2001/020321/07)**

**("Hereinafter referred to as the Service Provider")**

**REPRESENTED BY DIMAKATSO G. RADASI**

**In his capacity as the Director**

**Duly authorised thereto**

## TABLE OF CONTENTS

---

### CLAUSE NUMBER AND DESCRIPTION

---

1.	RECORDAL .....	4
2.	DEFINITIONS AND INTERPRETATIONS .....	4
3.	APPOINTMENT .....	7
4.	PERIOD OF APPOINTMENT .....	8
5.	PRIOR AGREEMENT .....	8
6.	TIMEOUS DELIVERY .....	8
7.	OBLIGATIONS OF THE SERVICE PROVIDER .....	9
8.	SUBCONTRACTION/ SUPPLIERS .....	11
9.	MANAGEMENT PLAN .....	12
10.	FAILURE BY THE SERVICE PROVIDER TO COMPLY WITH REQUIREMENTS SPECIFIED IN THE MANAGEMENT PLAN .....	12
11.	COMPENSATION TO THE SERVICE PROVIDER .....	14
12.	PAYMENT CONDITIONS .....	14
13.	PERFORMANCE REVIEW .....	15
14.	RISK MANAGEMENT .....	15
15.	QUALITY MANAGEMENT SYSTEMS .....	15
16.	INSURANCE AND INDEMNITY .....	16
17.	CONFIDENTIALITY .....	16
18.	WARRANTIES BY THE SERVICE PROVIDER .....	17
19.	DISPUTE RESOLUTION .....	17
20.	NO WAIVER .....	19
21.	TERMINATION BY EITHER PARTY .....	19
22.	TERMINATION .....	20
23.	ASSIGNMENT .....	20

24.	SEVERABILITY.....	20
25.	SUCCESSORS.....	20
26.	ENTIRE AGREEMENT .....	20
27.	DOMICILIUM CITANDI ET EXECUTANDI.....	21
28.	NOTICES .....	21
29.	GOVERNING LAW .....	22
30.	SIGNATURES.....	23

## 1. RECORDAL

- 1.1. The GDE requires services to support it in the provisioning of nutrition to Secondary schools in Gauteng to designated and authorised schools during the academic calendar term of the Gauteng Department of Education.
- 1.2. There is a need for the GDE to appoint Service Providers that would for the supply and deliver dry groceries & perishables for the national school nutrition programme.
- 1.3. The Programme is expected to target public ordinary schools serving the poorest communities, with particular priority given to farm, rural and informal settlements for school feeding.
- 1.4. The Service Provider has experience and expertise in the supply and delivery of dry groceries & perishables for the national school nutrition programme to learners at designated and authorised sites, and in terms of scheduled timeframes and target dates.

## 2. DEFINITIONS AND INTERPRETATIONS

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of or modify the terms of this Agreement nor any clause thereof, unless a contrary intention clearly appears:

- 2.1. Words importing –
  - 2.1.1. any one gender include the other two genders;
  - 2.1.2. the singular include the plural and vice versa; and
  - 2.1.3. Natural persons include created entities (corporate or unincorporated) and the State and vice versa.
- 2.2. The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
  - 2.2.1. "**Agreement**" means this Agreement together with all its schedules and annexures, each of which is an integral part of this Agreement and shall be interpreted and construed accordingly;
  - 2.2.2. "**Breach**" shall mean failing to perform any term of a Contract, written or oral, without a legitimate reason;
  - 2.2.3. "**Business Day**" means any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
  - 2.2.4. "**Change Order**" means an instruction and/or request for the specific purpose of recording the details of any alteration,

omission or amendment to the Agreement and which instruction and/or request must be signed by Designated Representatives of both Parties before becoming effective and binding on the Parties;

- 2.2.5. "**Commencement date**" shall mean 1 September 2014 to 31 March 2016 notwithstanding signature date hereof;
- 2.2.6. "**Confidential information**" means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and/or proprietary to the GDE or which is provided or disclosed in confidence, and which the GDE may disclose or provide to the Service Provider or which may come to the knowledge of the Service Provider by whatsoever means. The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;
- 2.2.7. "**Service Provider**" means GTL Food Manufacturers and Distributors (Pty) Ltd. (Registration No. 2001/020321/07), a company with limited liability / Closed Corporation duly registered and incorporated established in terms of the relevant laws of the Republic of South Africa, and having its principal place of business at Plot 55 Corner Steyn & Moira Street, Heuningklip, Pinehaven, Muldersdrift, 1739;
- 2.2.8. "**GDE**" means the Gauteng Department of Education, a Department in the Provincial Government of Gauteng, established under the directive of the Constitution of the Republic of South Africa Act 108 of 1996, situated at 111 Commissioner Street Johannesburg, 2001;
- 2.2.9. "**Designated Representatives**" means the Head of the GDE and the Chief Executive Officer of the Service Provider (or their duly appointed nominees). Either Party may replace such designated representative (as applicable) from time to time on reasonable prior written notice to the other Party;
- 2.2.10. "**District**" means those geographical areas as determined by the GDE and within which public ordinary schools are located;
- 2.2.11. "**Domicilium citandi et executandi**" shall mean the legally accepted address to which a party will accept receipt of correspondence relating to this matter;
- 2.2.12. "**Force Majeure**" shall mean an act of God; an inevitable, unpredictable act of nature (e.g. earthquake, floods);

- 2.2.13. **"Loss"** means any loss, liability, damage and/or claim arising from the rendering of Services under this Agreement;
- 2.2.14. **"Management Plan"** means a plan agreed between the Parties, and as may be amended from time to time, setting out, among others, the manner in which the Service Provider is to render the Service to the GDE;
- 2.2.15. **"Nutrition Services"** means the supply and delivery of dry groceries & perishables for the national school nutrition programme to be undertaken by the Service Provider, as set out in this Agreement and/or as might be advised to the Service Provider by the Department, such activities to include activities specified in the Management Plan;
- 2.2.16. **"Parties"** means the Service Provider and the GDE respectively;
- 2.2.17. **"PFMA"** means the Public Finance Management Act, Act 1 of 1999;
- 2.2.18. **"Menu"** shall mean the standardised menu options as stipulated by the Department from time to time;
- 2.2.19. **"Quality Standards"** means the standards and specifications with which the Services must comply with as set out in this Agreement;
- 2.2.20. **"Signature Date"** means the date of signature of this Agreement by the Party last signing;
- 2.2.21. **"Termination Date"** shall mean the end of the last day of the academic term for 31 March 2016;
- 2.2.22. **"VAT"** means value added tax in terms of the Value Added Tax Act, No. 89 of 1991, as amended;
- 2.2.23. **"GDH"** means Gauteng Department of Health;
- 2.2.24. **"Contractor"** means Service Provider
- 2.3. Any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time.
- 2.4. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to that definition as if the definition were a substantive provision in the body of this Agreement.
- 2.5. When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last

day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

- 2.6. Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.7. Expressions defined in this Agreement shall bear the same meanings in schedules or Annexures to this Agreement which do not themselves contain their own definitions.
- 2.8. Reference to day/s, month/s or year/s shall be construed as Gregorian calendar day/s, month/s or year/s.
- 2.9. 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 that term has not been defined in this interpretation clause.
- 2.10. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 2.11. The rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.
- 2.12. Any reference in this Agreement to a Party shall, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.

### **3. APPOINTMENT**

- 3.1 The GDE hereby appoints the Service Provider, and the Service Provider hereby accepts the appointment, for the supply and delivery of dry groceries & perishables for the national school nutrition programme to Secondary schools as per (Schedule 1), as set out in the menu specifications. This schedule shall be agreed upon between both parties and shall form part of this agreement.
- 3.2 This appointment is in respect of services rendered and should not be construed to mean a contract of employment and does not entitle the Service Provider to any such labour rights and entitlements, i.e. strike action.
- 3.3 The Service Provider shall not be entitled to make any false or misleading representations concerning its appointment as independent Service Provider

or to do anything which might injure the good name and reputation of the Department; or to bind the GDE in any manner whatsoever.

#### **4. PERIOD OF APPOINTMENT**

- 4.1 The Service Provider is appointed to render Services from the commencement date and shall endure until the termination date, alternatively until the need to provide the service is terminated upon seven 7 days' notice by the authorized official of the Department, whereafter may be renewed on a month-to-month basis until terminated by the Department on notice to the Service Provider.
- 4.2 The service provider will be required to render service for a period of eighteen months.

#### **5. PRIOR AGREEMENTS**

- 5.1 The Parties agree that the terms and conditions set out in this Agreement supersede all prior representations, agreements, statements and understandings whether oral or in writing. No party shall have any right or entitlement, save as specifically agreed herein.
- 5.2 Save as stated above, the Service Provider agrees that the GDE has concluded this Agreement on the basis of the Service Provider accepting the remuneration rate of three rand per child per feeding day inclusive of VAT in line with the approved and authorised schedule of learner numbers for the duration of the contract.
- 5.3 The Parties agree that the documents referred to in clause 7 are incorporated by reference as part of this Agreement.

#### **6. TIMEOUS DELIVERY**

- 6.1. Time is of utmost importance in the execution of Services by the Service Provider under this Agreement. In particular, the Service Provider shall at all times ensure complete compliance in delivering the Service to the Schools in the following manner:
  - 6.1.1 Dry groceries should be delivered before 10:00 once a month a week in advance;
  - 6.1.2 Perishables etc. fruit and vegetables should be delivered weekly by 08:00 Monday morning
- 6.2. Failure by the Service Provider to deliver the Service to the GDE within the authorised scheduled time frames and Target Dates shall be one of the factors that constitute a material breach of this Agreement on the part of the Service Provider.



## **7. OBLIGATIONS OF THE SERVICE PROVIDER**

The Service Provider shall:

- 7.1 Procure and deliver a pre-determined quality and quantity of food Items as stipulated by the Department for learners at the Schools within the Districts as provided for in this Agreement;
- 7.2 Obtain the Department's written consent, before ceding, assigning or delegating any of its rights or obligations in terms of this Agreement;
- 7.3 Not incur any liability on behalf of the GDE and/or in any way pledge or purport to pledge the Department's credit or make any Contract binding upon the Department, and the Service Provider hereby indemnifies and holds the GDE harmless against any and all loss or damage which the GDE may sustain pursuant to a breach of the provisions hereof;
- 7.4 Comply with all reasonable directions imposed by the GDE in relation to the services and the provision thereof from time to time, which additional directions shall not limit or affect any of the other duties or obligations of the Service Provider in terms of the provisions of this Agreement;
- 7.5 Deliver the services with no interruption to the Learners' daily school activities;
- 7.6 Be solely responsible for the administration of its own business affairs;
- 7.7 Nominate a representative from the Service Provider who will be responsible to liaise with the GDE to ensure that communication between the GDE and the Service Provider in terms of this Contract are maintained. Such appointment must be in writing and submitted to the District Director within seven (7) days of the signing of this Agreement;
- 7.8 Delivery goods/ products in strict adherence to the prescribed menu. No deviations will be accepted;
- 7.9 All food/s should comply with the regulations as set out in the contract document. In the event there is suspicion that food delivered is of a substandard nature, (stale perishables etc.), GDE will enlist the services of GDH to be sent for testing at no cost to GDE. In the event that such suspicion of sub-standard quality is confirmed, the supplier will pay all expenses incurred and no claims will be paid out:
  - 7.9.1 Items delivered must adhere to the relevant act, with regard to labeling and packaging;
  - 7.9.2 Items must have mixing and preparation instructions affixed;

- 7.9.3 Items purchased from stated suppliers may not be repackaged or reworked in any way;
- 7.9.4 Items must have the expiry date affixed and be clearly legible;
- 7.9.5 Items must have a stamp or mark not permitting the selling of supplied food.
- 7.10 Only provide food items for learners in designated and approved schools authorised by the Gauteng Department of Education.
- 7.11 Adhere to the Conditions of Contract and the Regulations pertaining to the Procurement activities of the Gauteng Provincial Government and the Acts and Regulations which are applicable to this Agreement.
- 7.12 Ensure that the contracted value of this Agreement includes value added tax (VAT).
- 7.13 Comply with the provisions of the PFMA and Treasury Regulations; by way of a reasonable written notice (of one (1) month) to the Service Provider should circumstances warrant it.
- 7.14 Provide the GDE with a written notice of not less than five (5) business days, of his/her intention to cancel either the whole or a part of this Agreement. Similarly the GDE shall upon notice of one school calendar terms give notice to the Service Provider of its intention to terminate or cancel alternatively to alter authorised routes as a result of operational reasons and requirements.
- 7.15 Comply with the detailed instructions as contained in the list of schools provided to your company.
- 7.16 Accepts that there will be regular monitoring of the service and submits to the same.
- 7.17 Suppliers/NGOs must tender for food deliveries at allocated schools per District.
- 7.18 Dry groceries should be delivered before 10:00 one a month a week in advance. Perishables etc. fruit and vegetables should be delivered weekly by 08:00 in the morning.
- 7.19 All deliveries must be done before 10:00 so that the feeding can start by 10:00.
- 7.20 All items to be transported under hygienically acceptable conditions i.e. closed vehicles.
- 7.21 **Delivery cannot take place retrospectively.** This means that if no delivery of fruit and vegetables took place for one weeks, the supplier cannot deliver the previous weeks' and claim for it.

- 7.22 Fruit and vegetables may not be delivered on a Friday for the following week.
- 7.23 All drivers making deliveries to schools must be trained by the supplier with regard to procedures and etiquette. The supplier will be held responsible for any misconduct by the drivers e.g. late deliveries, shortfall in food items, collusion with any school representative or community members.
- 7.24 Where a school has no water available, water must be provided by the supplier for any ingredients that needs water for preparation.
- 7.25 Items must have mixing and preparation instructions affixed, no menu items may be and delivered as a mixed item.
- 7.26 Item delivered must adhere to Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972, with regard to labeling and packaging. No menu items should be repackaged (e.g. maize meal, legumes etc.). All menu items should be delivered in their original package.
- 7.27 Items must have the expiry date affixed. All items should be labeling and the nutrition information should be clearly visible on the packaging.
- 7.28 In the spirit of the township economy, the service provider is encouraged to procure groceries from local township small businesses where possible.

## **8. SUBCONTRACTING/ SUPPLIERS**

- 8.1. The Contractor shall be entitled to delegate or subcontract those of its obligations under this Agreement as are agreed with the Department on similar but no less onerous terms and conditions as are set out in the Agreement that accompanied the bid document. The Departments of Education and finance should be inform in writing if Subcontractors/Suppliers are been change. The change in subcontractors/Suppliers should not compromise the quality of food items or service delivery.
- 8.2. Should the Contractor wish to delegate or subcontract any of its obligations herein to any other person or entity other than the Subcontractors/Supplier, it may do so subject to such person or entity being a PDI or SMME and obtaining the prior written consent (which will not be unreasonably withheld) of the Department.
- 8.3. The Contractor shall at all times remain the Department's sole point of contact regarding this Agreement and remain wholly responsible for the performance of its obligations including the provision of the Services in all respects in accordance with this Agreement notwithstanding the delegation or sub-contracting of all or any portion of its obligations under this Agreement. The Contractor shall be responsible to the Department and liable for all and any of the acts, defaults and omissions of any Subcontractor/Supplier and such Subcontractors agents, employees and any other persons whomsoever for which such person may be liable in law. The Department is neither liable nor responsible for any payments to the Subcontractor/Supplier if the contractor fail to pay his Subcontractor/Supplier.

- 8.4. No approval given to the Contractor to subcontract any of its obligations shall diminish the Contractor's contractual undertaking or responsibility to perform those obligations or alleviate the Contractor's liability in the event of non-performance of those obligations for whatever reason. The Department shall not be liable to make any payments to any Subcontractor/Supplier (or purported subcontractor/Supplier) and, further, the Contractor hereby indemnifies the Department against all and any claims made (including without limitation, for goods).
- 8.5. Delivered or tendered and services performed or rendered) by any Subcontractor /Supplier (or purported subcontractor) arising directly or indirectly out of the subcontracting (or purported subcontracting) by the Contractor of any of its obligations, regardless of how such claims arise.
- 8.6. Upon termination of this Agreement for any reason whatsoever, the Department reserves the right to enter into any agreements with any Subcontractors/Supplier, directly. The Contractor represents warrants and agrees that its arrangements with such Subcontractors/Supplier shall not prohibit or restrict such Subcontractors /Supplier from entering into any such direct agreements with the Department upon the termination of the Agreement.

## **9. MANAGEMENT PLAN**

- 9.1 The Service Provider shall have in place, upon signature of this Agreement, a Management Plan detailing, among others, the precise procedures (including time-lines) to be followed by the Service Provider in order to ensure that the Service is delivered within the scheduled time frames and Target Dates. This Management Plan sets out the schedule as approved by the GDE for the time being and to be implemented by the Service Provider in terms of this Agreement. This schedule shall be agreed upon between both parties and shall form part of this agreement.
- 9.2 The Management Plan may be amended from time to time and shall remain in effect until further changes are made to such a plan. The Department, at any time and in its sole discretion, but on written notice to the Service Provider, shall amend the Management Plan. Any amended Management Plan shall apply as if such a plan was adopted on Commencement of this Agreement.

## **10. FAILURE BY THE SERVICE PROVIDER TO COMPLY WITH REQUIREMENTS SPECIFIED IN THE MANAGEMENT PLAN**

- 10.1. The Service Provider acknowledges that the failure to deliver the Service effectively and efficiently by the Feeding calendar is highly disruptive to the proper functioning of the Department.
- 10.2. In consequence of the above, the Service Provider agrees that the Service Provider would be liable to a penalty for its failure to deliver the services

effectively and efficiently by the Target Dates and within the agreed Time Frames.

10.3. The Service Provider shall pay a penalty for failure to render the Service in terms of the required standards and time frames as follows:

10.3.1. Delivery of the Service in non-compliance with the contracted scheduled feeding calendar: the reduction in fee shall be reduced by number of days or learners, or the rate of invoices tendered for the disputed period.

10.4. The GDE shall be entitled, on Notice to the Service Provider, to engage the Services of a third party to procure and to deliver the Service as contemplated in this Agreement should the Service Provider fail to deliver the Service within 12-hours of the non-delivery of the service in terms of the Target Dates and Time Frames.

10.5. Should GDE suspend the service provider while investigating any matter pertaining to services, the service provider will be advised of the new school where services will be rendered until such time that the outcome of the investigation is communicated to the service provider.

10.6. The GDE may, at any time during the course of this Agreement, engage the Services of a third party to procure and to Deliver the Service as contemplated in this Agreement should the GDE have a reasonable basis to believe that the Service Provider is or shall be unable to discharge its obligations under this Agreement, including where:

10.6.1. the Service Provider is unable to pay any of its suppliers, employees creditors;

10.6.2. the Service Provider is unable to Deliver the Service;

10.6.3. the directors of and/or shareholders of and/or employees of the Service Provider are party to any kind of fraud and/or corruption, including making inducements and/or attempting to induce employees of the GDE with regard to anything connected with the rendering of Services by the Service Provider.

10.7. Any cost and/or expense- incurred by the GDE in engaging a third party to procure and/or to Deliver the Service as contemplated in this Agreement shall be recouped from any fee and/or amount of money otherwise due to the Service Provider under this Agreement. The GDE may set-off, at any time, costs and/or expenses incurred by the GDE in engaging a third party to procure the Services and/or to Deliver the Services as contemplated in this Agreement against any indebtedness of the GDE that is due to the Service Provider.

## **11. COMPENSATION TO THE SERVICE PROVIDER**

- 11.1. The provisioning of dry groceries and perishables to learners in Secondary schools within the Gauteng Province by the Service Provider shall be performed at a rate of three rand per learner, per day inclusive of VAT in line with the approved and authorised schedule of learners for the duration of the contract.
- 11.2. Payment of claims will adhere strictly to the correct daily food items delivered and utilized to feed learners.
- 11.3. The Service Provider shall be paid only for Services approved in line with the signed and stamped delivery notes submitted by the Service Provider to the authorised official in writing.
- 11.4. The GDE may amend the names of the authorised official at any time and on written notice to the Service Provider.
- 11.5. The GDE shall make no payment, and the Service Provider shall have no right to receive payment, where the Service Provider rendered a Service other than as approved by an Authorised Official.
- 11.6. Any breach to any terms of this agreement shall entitle the GDE to withhold payment due to the Service Provider until such time that the breach has been remedied.

## **12. PAYMENT CONDITIONS**

- 12.1. The Service Provider shall be paid only on production by the Service Provider of an invoice and a signed and stamp delivery note by the school for which payment is sought.
- 12.2. The GDE reserves the right, at any time, to refuse to pay; or where payment has been made, to deduct such payment from any future payments, should the Service Provider deliver a service other than in accordance with the provisions of this Agreement or in the alternate, where the Service Provider has breached the terms and conditions of this agreement.
- 12.3. Save as stated elsewhere in this Agreement, the GDE shall be entitled to set-off, at any time, any amount due to the Service Provider by the GDE against any payment and/or benefit due to the Department.
- 12.4. The GDE shall be liable to make payments to the Service Provider of amounts calculated with reference to the charges set out in Schedule 1 attached hereto.
- 12.5. As consideration for the delivery of the Services, which includes the provision of the Services in respect of each School, the Department shall pay to the Contractor the charges stipulated in the Pricing Schedule per Learner per day actually fed, which charges are stipulated inclusive of VAT, unless such Item is

VAT exempted, and inclusive of all other taxes, duties, charges, fees and costs (including, without limitation, freight, delivery and insurance). For the sake of clarity, the Contractor will not be entitled to submit a claim for those days it has failed to provide the Services. All claims/ invoices should be accompanied by proof of delivery (delivery note / POD's) with a principal's signed and a recognise GDE approved school stamp. The principal can also delegate an educator to sign delivery notes.

12.6. The Contractor shall submit all claims for each specific month to the Department within 5 (five) Business Days after the service has been rendered.

### **13. PERFORMANCE REVIEW**

13.1. The performance of the Service Provider shall be subject to continuous assessment to ensure that the Service Provider meets the deadlines for the Delivery of the Services by the Target Dates and Time Frames.

13.2. The Service Provider shall give the GDE monthly progress reports in terms of the Management Plan:

### **14. RISK MANAGEMENT**

The Service Provider warrants that all records and documents related to this service rendered are either owned by the GDE or that the GDE is lawfully entitled to have access to such documentation.

### **15. QUALITY MANAGEMENT SYSTEMS**

15.1. The Management Plan by the Service Provider shall provide for quality assessment regarding the carrying-out by the Service Provider of its obligations under this Agreement.

15.2. The GDE shall, at any time and without notice to the Service Provider, be entitled to take any step to monitor and to assess whether or not the Service Provider complies with the Management Processes as detailed in this Agreement.

15.3. The Service Provider represents that any Services procured by the Service Provider shall comply with the applicable standards approved by the South African Bureau of Standards for the kind of Services delivered by the Service Provider.

15.4. The GDE shall not make any payment in respect of any Services where such Services do not meet the quality standards.

## 16. INSURANCE AND INDEMNITY

- 16.1. The Service Provider shall, at any time and on demand by the Department, produce a certificate evidencing that the Service Provider has taken insurance and that such insurance is in full force and effect and that such insurance cannot be cancelled without giving the GDE at least thirty (30) days' notice prior to the effective date of the cancellation.
- 16.2. The Service Provider agrees that it is a material term of this Agreement that the Service Provider shall have insurance, at all times, during the operation of this Agreement.
- 16.3. The Service Provider hereby indemnifies and holds the GDE harmless against any liability, loss or expense arising under statute or at common law arising from any act or omission or commission consequent to the Service Provider and the GDE having concluded this Agreement. The Service Provider undertakes to make good all losses suffered by GDE as a result of omission and/or commission of the Service Provider pursuant to this agreement.

## 17. CONFIDENTIALITY

- 17.1. While this Agreement remains in force and after its expiration or earlier termination for any reason, the Service Provider shall be obliged to keep confidential:
  - 17.1.1. all information which it receives from the GDE in the course of carrying out its duties under this Agreement and which is stated to be or which by its nature is intended to be kept confidential;
  - 17.1.2. all information concerning the affairs of the GDE its transactions and financial and technical operations and arrangements which come to the Service Provider's knowledge; and
  - 17.1.3. the substance of any report, recommendation or other advice which the Service Provider may give to the GDE in connection with its duties under this Agreement.
- 17.2. If the Service Provider is uncertain about whether any information is to be treated as confidential, the Service Provider shall then be obliged to treat that information as such until clearance, in writing, is obtained from the Department.
- 17.3. The Service Provider undertakes not to disclose any information to be kept confidential nor to use it or exploit it for its own or anyone else's benefit.
- 17.4. The Service Provider shall be entitled to disclose any information to be kept confidential if and to the extent that disclosure is bona fide and necessary for the purposes of carrying out the Service Provider's duties under this Agreement.



## **18. WARRANTIES BY THE SERVICE PROVIDER**

The Service Provider warrants to the GDE that:

- 18.1. The Service Provider is an expert, specializing in the delivery and provisioning of food items to learners in Primary schools in Gauteng;
- 18.2. The tax affairs of the Service Provider are in order and that such affairs shall remain in order during the operation of this Agreement. In particular, the Service Provider warrants that it shall, at all times, have a valid tax clearance certificate as issued by the appropriate authority;
- 18.3. Has proven knowledge and skill to manage large scale projects;
- 18.4. Has proven skill and knowledge in financial management;
- 18.5. Has an effective, efficient and reliable transport facility to properly execute the Services being rendered to the Department;
- 18.6. Has an established and functional information system and database capability for purposes of proper execution of the Services being rendered to the Department;
- 18.7. Has employees with appropriate experience and qualifications in the management and execution of the service to be rendered to the Department;
- 18.8. Has the overall ability to provide a service that is characterised by safety, accuracy, economy and speed of execution having regard to the Services being rendered to the Department;
- 18.9. It shall comply with all the relevant legislative provisions relevant to the services during the currency of this agreement.

## **19. DISPUTE RESOLUTION**

- 19.1. In the event of any dispute or difference arising between the Parties in relation to or arising out of this Agreement, including the interpretation, rectification, termination or cancellation of this Agreement, the Parties shall forthwith meet to attempt to settle such dispute or difference, and failing such settlement within a period of 30 (thirty) Business Days:
  - 19.1.1. a party claiming such dispute or difference, shall forthwith advise the other in writing thereof; and
  - 19.1.2. on receipt of such notice, the Parties shall meet and negotiate in good faith in order to resolve such dispute or difference.

- 19.2. If the Parties are unable to resolve such dispute or difference the matter will be referred to the Service Provider's Chief Executive Officer and to the Department's Chief Financial Officer and the Deputy Director-General: District Institutional Management and Governance ("the Senior Officials"). The Parties record that it is their intention that the specified officials will use their respective best endeavours to resolve the issue in question as expeditiously as possible, but in any event within a period of 30 (thirty) Business Days from the matter being referred to them.
- 19.3. Should the Senior Officials fail to resolve such dispute or difference within the aforesaid period or such longer period as the Parties may agree in writing, such dispute or difference shall be referred to arbitration as herein provided.
- 19.4. The arbitration shall be undertaken by a single arbitrator to be agreed upon between the Parties or, failing such agreement, within 7 (seven) Business Days of the dispute being referred to arbitration, be appointed according to the Rules of the Arbitration Foundation of Southern Africa upon the written request of either party, subject only to the requirement that the arbitrator be experienced in the resolution of commercial disputes.
- 19.5. The appointment of the arbitrator shall be final and binding on the Parties.
- 19.6. The Party having referred the dispute or difference to arbitration shall, within 28 (twenty eight) Business Days of the appointment of the arbitrator, file its claim, setting out the nature of the claim and the detailed facts and documents in support thereof, by serving a copy thereof on the arbitrator and on the other Party.
- 19.7. Within 28 (twenty eight) Business Days of receipt of the claim, the other Party shall file its answer thereto, setting out in detail the grounds and facts upon which the claim is resisted and any documents in support thereof, by serving a copy thereof on the arbitrator and the claiming Party.
- 19.8. Unless agreed to in writing by the Parties, the rules applicable to the filing of pleadings and of discovery in the conduct of civil proceedings shall be applicable.
- 19.9. The arbitrator shall, save as herein provided, have the powers conferred upon an arbitrator under the relevant statutory prescriptions according to South African law but shall not be obliged to follow the procedures under such legislation to the extent permitted in terms of the statute, it being the intention of the Parties that the dispute resolution procedures should be concluded as expeditiously as possible and the arbitrator shall be entitled to decide on such procedures as the arbitrator may consider desirable for the speedy determination of the dispute.
- 19.10. The decision of the arbitrator shall be final and binding on the Parties, and may be made an order of court of competent jurisdiction.

- 19.11. The arbitrator shall make an award in respect of the costs of the arbitration having regard to the substantial success of each Party in the outcome of the proceedings.
- 19.12. The Parties irrevocably agree that a decision in any proceedings hereunder:
- 19.12.1. will be final and binding on all of them; and
  - 19.12.2. will forthwith be carried into effect.
- 19.13. The arbitration shall take place in Johannesburg.
- 19.14. Nothing in this clause shall preclude either party from seeking any interim relief from any competent court having jurisdiction pending the institution of any arbitration proceedings.

## **20. NO WAIVER**

Failure by either party to enforce any of the provisions of this Agreement shall not be construed as a waiver by such party of any such provisions nor in any way affect the validity of this Agreement or any part thereof.

## **21. TERMINATION BY EITHER PARTY**

A party may immediately terminate this Agreement by giving a written notice to the other party if:

- 21.1. The other party has breached this Agreement and fails to remedy such breach within twelve (12) hours of receiving notice of that breach; or
- 21.2. The other party has a receiver and/or administrator and/or liquidator or provisional liquidator appointed on its behalf; or
- 21.3. The other party is unable to pay its debts as they fall due or compounds with its creditors or assigns any of its assets for the benefit of its creditors;
- 21.4. Otherwise commits any act of insolvency;
- 21.5. The Service Provider has not made its vehicles available for the rendering of the service within the target dates and time frames;
- 21.6. The Service provider has failed to comply with any Act and/or regulations applicable to the rendering of services;
- 21.7. Without derogating from the aforesaid, GDE shall be entitled to terminate this agreement summarily and without notice to the Service Provider should there be an eminent danger to the learners. GDE shall solely at its own discretion determine whether or not there is an eminent danger to learners.

**22. TERMINATION**

Any termination of this Agreement will be without prejudice to the rights of either party against the other in respect of anything done or omitted under this Agreement before termination or regarding any sums or other claims outstanding at the time of termination.

**23. ASSIGNMENT**

No Party may dispose of or encumber any right under this Agreement without the prior written consent of the other Party.

**24. SEVERABILITY**

The provisions of this Agreement are deemed to be severable and any invalidity of any provision of this Agreement will not affect the validity of its remaining provisions.

**25. SUCCESSORS**

- 25.1. This Agreement binds the Parties and their successors or assigns, provided that any successor or assign shall be bound by the terms of this Agreement as if such a successor or assign was a party to this Agreement on the Effective Date.
- 25.2. The GDE shall, in addition to its other rights in this Agreement, have the right to terminate this Agreement should:
  - 25.2.1. The Service Provider sell its business;
  - 25.2.2. There be a change in the shareholding of the Service Provider; and
  - 25.2.3. Employees of the Service Provider who are responsible for the operational functioning relating to the Services have embarked on illegal action and/or strike action.

**26. ENTIRE AGREEMENT**

This Agreement embodies the entire understanding and agreement between the Parties as to the subject matter of this Agreement. Except where expressly provided for in this Agreement, any variation to this Agreement shall be in writing and shall further be with the written consent of both Parties.

## 27. DOMICILIUM CITANDI ET EXECUTANDI

27.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other document or communications of whatsoever nature, the following addresses:

27.1.1. The Department:

Physical: 111 Commissioner Street,  
Johannesburg,  
2001  
Postal: P O Box 7710,  
Johannesburg,  
2000  
Telefax: 011 335 0258  
E-mail: Boy.Ngobeni@gauteng.gov.za  
Attention: The Head of Department, Gauteng Department of  
Education

27.1.2. The Service Provider:

Physical: GTL Food Manufacturers and Distributors (Pty) Ltd.  
Plot 55 Corner Steyn & Moira Street  
Heuningklip  
Pinehaven  
Muldersdrift  
1739  
Postal: P.O. Box 2245  
Ruimsig  
1732  
Tel: 087 725 5573 / 082 659 0458  
Fax: 086 583 6136  
E-mail: md@gtlfoods.co.za  
Website  
Attention: Dimakatso G. Radasi

## 28. NOTICES

- 28.1. Any notice which any contracting party gives in terms of this Agreement must be in writing and addressed or sent or delivered to the addresses as reflected in this Agreement.
- 28.2. Any communication (including, without limitation, any notice, offer, proposal, authorisation or consent) in this Agreement must also be given by an authorised officer of the sender, and sent to the other party's address or facsimile number.

- 28.3. A party may at any time change its *domicilium* by notice in writing, provided that the new *domicilium* consists of, or includes, a physical address situated in the Republic of South Africa at which process can be served.
- 28.4. Any notice given in connection with this Agreement shall:
- 28.4.1. be delivered by hand; or
  - 28.4.2. be sent by prepaid registered post; or
  - 28.4.3. be sent by telegram; or
  - 28.4.4. be sent by telefax; or
  - 28.4.5. be sent by electronic mail transmission (e-mail).
- 28.5. A notice given as set out above shall be deemed to have been duly given –
- 28.5.1. if delivered, on the date of delivery; or
  - 28.5.2. if sent by telegram on the first business day following the day on which the text of the notice is given to the post office for transmission; or
  - 28.5.3. if sent by telefax, on the first business day following the business day that the telefax is transmitted, except that any telefax transmitted after 16:30 shall be deemed to have been received on the following business day;
  - 28.5.4. if sent by e-mail; on the first business day following the business day that the e-mail is transmitted, except that any e-mail transmitted after 16:30 shall be deemed to have been received on the following business day.

## 29. GOVERNING LAW

This Agreement is subject to South African law.

30. SIGNATURES

SIGNED ON BEHALF OF EACH PARTY AS FOLLOWS:

For GDE

Signed at Johannesburg on

12 October 2015

Signature: \_\_\_\_\_  
(duly authorised)



Full name and surname:

Devathasen Channe

Position:

Act. HoD

For The Service Provider

Signed at Johannesburg on

13 NOVEMBER 2015

Signature: \_\_\_\_\_  
(duly authorised)



Full name and surname:

Joy MUBUNGELE

Position:

SALES ASSISTANT MANAGER