



SERVICE LEVEL AGREEMENT

MADE AND ENTERED INTO BETWEEN

POLOKWANE MUNICIPALITY

Herein represented by **THABITHA CONSTANCE MAMETJA** in her capacity as
Municipal Manager and duly authorised thereto.

(Hereinafter referred to as Polokwane)

AND

FLEET AFRICA (PTY) LTD

**A company duly registered in the Republic of South Africa under Registration
number 1981/001466/07 with VAT registration number 4780105419**

Herein represented by **KAMOGELO CRISPIAN JOSIAH ISAAC MMUTLANA** in his/her
capacity as Director of the service provider and duly authorised thereto by virtue of
a resolution of the Board of Directors dated 05 June 2012 attached hereunder.

(Hereinafter referred to as the Service Provider)

1. **PREAMBLE**

WHEREAS Polokwane has called for the provision of comprehensive fleet solution and
related equipment as defined under Bid Number 49/2012;

AND WHEREAS Polokwane has awarded Bid Number 49/2012 to the service provider
and the service provider accepted the tender for the provision of comprehensive fleet
solution and related equipment as defined under Bid Number 49/2012;

AND WHEREAS the service provider as part of the terms and conditions of the said Bid
warrants the services and administration thereof as stated under Bid 49/2012 and further
shall provide a comprehensive fleet solution and related equipment as per the service
levels set out herein;

AND WHEREAS the service provider agrees to enter into the service level agreement, which service level agreement is subject to the General Conditions of Contract applicable to government bids, contracts and orders.

THEREFORE the parties wish to record in writing the terms and conditions of their agreement relating to the aforementioned and matters incidental thereto.

2. **INTERPRETATION**

2.1 Definitions:

2.1.1 **“Bid Document”** means an offer to supply goods to Polokwane at a specified price and also means Terms of Reference and Bid Document(s);

2.1.2 **“Contract”** shall mean this Service Level Agreement and includes the General Conditions of Contract, Special Conditions of Contract Form of Bid 49/2012, Schedule of Prices, the specifications including any schedules, drawings, patterns, samples attached to the specification, the service level/agreement with annexures and any agreement entered into in terms of the General Conditions of Contract applicable to government bids, contracts and orders and all other schedules hereto;

2.1.3 **“Contract Manager”** shall mean a designated employee, who have been appointed in writing, from each party, whose responsibility it is to ensure that each party complies with its contractual obligations under this agreement and who is responsible to develop and maintain service level reports and acts as a communication channel between the parties;

2.1.4 **“DIRECTOR”** shall mean the Director Corporate and shared services of Polokwane responsible for this tender or his duly authorised representative;

- 2.1.5 **“Final delivery certificate”** means the document issued by Polokwane confirming that all the known defects have been rectified and that the works, goods or services appear in good order and have been accepted;
- 2.1.6 **“Letter of acceptance”** means the written communication by Polokwane to the service provider recording the acceptance by Polokwane of the service provider’s tender subject to further terms and conditions to be included in the contract;
- 2.1.7 **“MM”** shall mean Municipal Manager of Polokwane appointed in terms of **Section 82 of the Local Government Structures Act 117 of 1998**;
- 2.1.8 **“Official Order(s)”** means an official document issued by Polokwane calling for the supply of goods pursuant to the contract or tender;
- 2.1.9 **“Effective date”** shall be the date of the last signature to this agreement;
- 2.1.10 **“Termination date”** – in relation to this contract means the date therein indicated as the termination date, or the final delivery certificate, the completion certificate or the occupancy certificate whichever is the latter;
- 2.1.11 **“Warranties”** – means collectively any and all warranties (if any) given by the service provider in terms of this agreement.
- 2.1.12 **“SDC”** shall mean Service Delivery Centre.
- 2.1.13 **“The parties”** shall mean Polokwane and the service provider.

2.2 Interpretation:

- 2.2.3 In this agreement clause headings are for convenience and shall not be used in its interpretation and, unless the context clearly indicates a contrary intention:-

2.2.4 An expression which denotes –

2.2.4.1 Any gender includes the other genders;

2.2.4.2 a natural person includes an artificial or juristic person and vice versa;

2.2.4.3 the singular includes the plural and vice versa.

2.2.5 Any reference to any statute, regulation or other legislation or official policy shall be a reference to that statute, regulation or other legislation or national policy as at the signature date of this agreement, and as amended or re-enacted from time to time;

2.2.6 When any number of days is prescribed, such 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 a business day;

2.2.7 Where any term is defined within a particular clause, other than the interpretation clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this agreement.

3. **APPOINTMENT OF THE SERVICE PROVIDER**

3.1 Polokwane appoints the service provider and the service provider accepts the appointment for the provision of comprehensive fleet solution and related equipment under the original Municipal Bid 49/2012 read with this service level agreement and annexures.

3.2 All rights and obligations arising from this agreement shall be deemed to have come into operation on the commencement date.

3.3 Neither the appointment of the service provider in clause 3.1 nor anything in this agreement shall give rise to or be construed as giving rise to an employer/employee relationship between the parties, nor shall it give rise to a

joint venture nor an agreement of partnership between the parties, nor shall it give rise to a labour broking agreement.

- 3.4 The parties acknowledge that neither of the parties has any authority whatsoever to represent or to bind the other party in any capacity whatsoever. In particular, but without limiting the generality of the foregoing, neither of the parties shall be entitled to conclude any contract or sign any document on behalf of the other party, or in any way bind the other party's performance or discharge of any obligation.

4. **RESPONSIBILITIES OF THE SERVICE PROVIDER AND SERVICE LEVELS**

4.1 **General responsibilities of the service provider**

4.1.1 Provision of a comprehensive fleet solution and related equipment to Polokwane;

4.1.2 Hire vehicles to Polokwane.

4.2 **Special Conditions of contract**

4.2.1 The vehicles to be hired shall comply in all respects with the requirements of the Road Traffic Act, as amended from time to time, regarding roadworthiness and shall be registered, licensed and fitted with number plates on delivery;

4.2.2 Full specifications and vehicle performance shall be supplied with each vehicle offered in line with the final accepted offer;

4.2.3 The vehicles shall be delivered to Polokwane's Workshop, Vermikuleit Street, Ladanna, Polokwane;

4.2.4 All vehicles shall be white, unless specifically stated otherwise. Except for fire vehicles and normal yellow construction equipment;

4.2.5 All vehicles shall be installed with Polokwane Local Municipality (PLM) decals;

4.2.6 Specified accessories are mandatory; and

4.2.7 The Government's RT5 pricing shall be used when costing, where applicable;

4.3 **Payment of disposed vehicle on list (Appendix 5)**

The service provider shall pay the agreed purchase price for disposed vehicles on signing of this agreement.

5. **PENALTIES**

5.1 Subject to Clause 7, if the service provider fails deliver the vehicles as specified in this agreement and annexures, Polokwane shall, without prejudice to its other remedies under this agreement, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance.

Polokwane may also consider termination of the agreement pursuant to Clause 23.

6. **TERMS OF REFERENCE AND BID DOCUMENTS**

6.1 The original Terms of Reference and Bid Documents submitted by the service provider must be regarded as an integral part of this Agreement and forms part of the whole Agreement between the parties.

6.2 This Agreement must be interpreted in the light of the fact that the prescriptions, conditions and guidelines in the Terms of Reference and Bid Documents are intended to supplement, particularise and expand the terms and conditions of this Agreement.

6.3 Where possible the stipulations in the Terms of Reference and Bid Documents must be interpreted in such a way that it is not in conflict with this Agreement. However, where any terms, conditions, prescription or guidelines in the Terms of Reference and Bid Documents are in direct conflict with this Agreement and cannot be given a

meaning or meanings that are not in conflict with the Agreement, and cannot be reconciled with it, then the Terms of Reference (Bid 49/2012) or the agreement, whichever is in the best interest of the Polokwane, must be followed and shall prevail.

7. **FORCE MAJEURE**

7.1 Notwithstanding the provisions of Clauses 5 and 23, the service provider shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that this delay in performance or other failure to perform their obligations under the agreement is the result of an event of force majeure.

7.2 If a force majeure situation arises, the service provider shall promptly notify Polokwane in writing of such condition and the cause thereof. Unless otherwise directed by Polokwane in writing, the service provider shall continue to perform its obligations under the agreement as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

8. **RESPONSIBILITIES OF POLOKWANE**

POLOKWANE undertakes to:-

- 8.1 Pay the service provider a monthly rental in respect of the vehicles as specified in the schedules to the bid documents excluding VAT.
- 8.2 Cooperate with the service provider to ensure that the provision of comprehensive fleet solution and related equipment is implemented successfully.
- 8.3 Not to withhold payment of the rental payment or other amounts payable in terms of the rental agreement, for any reason whatsoever.

9. **CONFIDENTIALITY**

- 9.1 It is recorded that the service provider, by virtue of his/her association with Polokwane, will become in possession of and will have access to confidential

information belonging to Polokwane including, but without limiting the generality of the foregoing, the following matters:

- 9.1.1 The contractual and financial arrangements between Polokwane and other bidders;
 - 9.1.2 Polokwane's financial matters;
 - 9.1.3 All other matters, which relate to Polokwane's business and in respect of which information is not readily available in the ordinary course of business to a competitor.
- 9.2 Notwithstanding the foregoing provisions of this clause, the information referred to therein as confidential information shall cease to be confidential information if:
- 9.2.1 it is publicly available or becomes publicly available other than as a result of a breach of this contract;
 - 9.2.2 it comes or came into the possession of service provider other than by virtue of service provider's relationship with Polokwane.
- 9.3 Having regard to the facts recorded above, service provider undertakes that in order to protect the proprietary interest of Polokwane in the confidential information-
- 9.3.1 they will not during the contract period or at any time thereafter, directly or indirectly, either use or disclose any of the confidential information, other than as may be required by their contract with Polokwane or as may be required to comply with any law or to enforce service provider's rights in terms of this contract;
 - 9.3.2 any written or other instructions, drawings, notes, memoranda or records relating to the confidential information which are made by them or which come into their possession by any means whatever shall be deemed to be the property of Polokwane. Such property of Polokwane shall be surrendered to Polokwane on demand and in any event on the termination

date and service provider shall not retain any copies thereof or extracts therefrom.

9.4 Any action which can be construed as a contravention of the condition referred to in clause 9.3, 9.3.1 and 9.3.2 above, will expose service provider to the termination of this contract by Polokwane.

10. **INDEMNITY**

10.1 Without prejudice to any of the rights of Polokwane arising from any of the provisions of this agreement, service provider indemnifies and holds Polokwane harmless against all loss, liability, damage, claim, proceeding or expense of any nature whatever (including without limiting the generality of the foregoing all party and party and attorney and client costs incurred by Polokwane) which Polokwane may suffer as a result of or which may:

10.1.1 be attributable to-

10.1.1.1 any liability of service provider, whether actual or contingent;

10.1.1.2 any liability of service provider for taxation, for which purpose the terms "taxation" shall include:

10.1.1.2.1 normal taxation;

10.1.1.2.2 value added tax;

10.1.1.2.3 minimum or secondary taxation on companies.

10.1.1.3 Regional services council, District or equivalent levies;

10.1.1.4 All other forms of levies or taxation.

10.1.1.5 Any penalties or interest as a result thereof.

10.1.2 arise out of or on the course of or by reason of service provider's performance in terms of this agreement;

10.2 The service provider undertakes to indemnify Polokwane in respect of all actions, prosecutions or claims or any nature that might be brought in any manner against

The service provider as a consequence of the negligence of the service provider, its employees, members or any persons under its control;

10.3 The service provider shall not be liable for such liability, loss, damage, claim, and proceeding or expense where same was due to any act or neglect of Polokwane or any person for whose actions Polokwane is legally liable.

11. **PERFORMANCE SECURITY**

The service provider shall be liable to provide a performance security in the form of guarantees to the value of 10% of the total five (5) year value of the contract agreed upon.

12. **TERM OF THE CONTRACT**

12.1 The contract period shall be for five (5) years from the effective date.

13. **PRICE**

13.1 The price charged by the service provider for the provision of comprehensive fleet solution and related equipment shall R 229 163 716.72 VAT inclusive.

14. **BREACH**

14.1 Should either the service provider or Polokwane commit a breach of any material provision of this agreement and fail to remedy such breach within fourteen (14) days after receiving written notice from the party aggrieved thereby requiring the defaulting party to do so, then the aggrieved party shall be entitled, without prejudice to the aggrieved party's other rights in law, to cancel this agreement or to claim immediate specific performance of all of the defaulting party's obligations whether or not due for performance, in either event without prejudice to the aggrieved party's right to claim damages;

14.2 Should any party permit a non-material breach of any provision of this agreement and fail to remedy such breach within fourteen (14) days of receiving written notice from any other party to the contract requiring it to do so, then the aggrieved party shall be entitled to claim immediate specific performance of all of the defaulting party's obligations whether or not due for performance, without prejudice to the aggrieved party's other rights in law, including the right to claim damages.

15. **SETTLEMENT OF DISPUTES**

15.1 If any dispute or difference of any kind whatsoever arises between the parties in connection with or arising out of this agreement, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

15.2 If, after 30 (thirty) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either Polokwane or the service provider may give notice to the other party of their intention to commence with mediation. No mediation in respect of this matter may commence unless such notice is given to the other party.

15.3 Should the parties not be able to settle a dispute by means of mediation, it may be settled in a South African court of law.

15.4 Notwithstanding any reference to mediation and/or court proceedings herein,
 (a.) the parties shall continue to perform their respective obligations under the agreement unless they otherwise agree, and
 (b.) Polokwane shall pay the service provider any monies due to them for goods delivered and/or services rendered according to the prescripts of this agreement.

16. **PUBLICITY**

None of the parties shall issue any public document or make any press release relating to or arising out of this agreement or its subject matter without obtaining the prior written approval of all other parties to this agreement, to the contents thereof and the manner of

its presentation and publication; provided that such approval shall not be unreasonably withheld or delayed.

17. **AMENDMENT OR VARIATION OF THIS AGREEMENT**

No addition to, variation or agreed cancellation of this agreement shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.

18. **WAIVER OF RIGHTS**

18.1 No party's partial exercise of, failure to exercise or delay in exercising any right, power, privilege or remedy in terms of this agreement shall be construed as a waiver by that party;

18.2 Such partial exercise or failure shall not operate so as to preclude that party from exercising its rights strictly in accordance with this agreement, unless such party has expressly waived or otherwise foregone its ability to exercise such right, power, privilege or remedy (at all or in part or until after such period of delay) in terms of a written document signed by such party;

18.3 In the event of a party having concluded such a written document it shall be strictly construed.

19. **CESSION OF RIGHTS**

19.1 Save as is otherwise expressly stipulated in this agreement, this agreement is personal to the parties;

19.2 No party may cede, delegate or assign any of its rights or obligations in terms of this agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed.

20. **DOMICILE & NOTICES**

20.1 The parties choose their domicile for all purposes relating to this agreement, including the giving of any notice, the payment of any sum, the serving any process, as follows –

20.1.1 Polokwane Municipality

Physical - Cor Landdros Mare & Bodenstein Street
POLOKWANE
0699

Postal - P.O. Box 111
POLOKWANE
0700

Fax - (015) 290-2173

20.1.2 THE SERVICE PROVIDER

Physical - 27 Impala Road
Chislehurst
2146

Postal – 27 Impala Road
Chislehurst
2146

Fax - (011) 523 4867

20.2 Each party shall be entitled from time to time, by giving written notice to the others, to vary its physical domicile to any other physical address (not being a post office box or Poste Restante) within the Republic or to vary its postal domicile or its facsimile domicile to any other within the Republic.

20.3 Any notice given or any payment made by any party to any other (“addressee”) which is –

20.3.1 delivered by hand between the hours of 08:00 and 16:30 on any business day to the addressee's physical domicile for the time being, shall be deemed to have been received by the addressee at the time of delivery;

20.3.2 posted by registered post to the addressee's postal domicile for the time being, shall be presumed to have been received by the addressee on the fourteenth day after date of posting.

20.4 Any notice given by any party to any other which is sent by facsimile to the addressee's facsimile domicile for the time being shall be deemed to have been received by the addressee on the day immediately succeeding the date of successful transmission thereof.

20.5 This domicile clause shall not operate so as to invalidate the giving or receipt of any notice, which is actually received by the addressee other than by a method referred to in this clause.

20.6 Any notice required or permitted to be given in terms of this agreement shall be valid and effective only if in writing.

21. **DELAYS IN THE SERVICE PROVIDER'S PERFORMANCE**

21.1 Performance of services shall be made by the service provider in accordance with the time schedule prescribed by Polokwane and which forms part of this agreement.

21.2 If at any time during the performance of the agreement, the service provider or its subcontractors should encounter conditions impeding timely performance of services, the service provider shall promptly notify Polokwane in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the service provider's notice, Polokwane shall evaluate the situation and may at their discretion extend the service provider's time for performance, with or

without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of this agreement.

21.3 The right is reserved to procure outside of the contract or to have minor essential services executed if an emergency arises, the service provider's point of performance is not situated at or near the place where the services are required, or the service provider's services are not readily available.

21.4 Except as provided for under Clause 7, a delay by the service provider in the performance of its delivery obligations shall render the service provider liable to the imposition of penalties pursuant to Clause 5, unless an extension of time is agreed upon pursuant to Clause 5 without the application of penalties.

21.5 Upon delay beyond the service period, Polokwane shall, without cancelling the agreement, be entitled to procure services of a similar quality and up to the same quantity in substitution of the service not performed in conformity with the agreement, or to cancel the agreement and procure such service as may be required to complete the agreement without prejudice to their other rights, be entitled to claim damages from the service provider.

22. **APPLICABLE LAW**

This contract shall be governed by the laws of the Republic of South Africa and notwithstanding the amount or cause of action involved, the Magistrate Court for the district of the relevant SDC shall have jurisdiction in respect of any action whatever arising from this contract.

23. **TERMINATION FOR DEFAULT**

23.1 Polokwane, without prejudice to any other remedy for breach of contract, by written notice of default sent to the service provider, may terminate this agreement in whole or in part:

- (a.) if the service provider fails to deliver any or all of the goods within the period(s) specified in the agreement, or within any extension thereof granted by Polokwane;
- (b.) if the service provider fails to perform any other obligation(s) under the agreement, or;
- (c.) if the service provider, in the judgement of Polokwane, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event Polokwane terminates the agreement in whole or in part, Polokwane may procure, upon such terms and in such manner, as it deems appropriate, goods, works or services similar to those undelivered, and the service provider shall be liable to Polokwane for any excess costs for such similar goods, works or services. However, Polokwane shall continue performance of the agreement to the extent not terminated.

23.3 Where Polokwane terminates the agreement in whole or in part, Polokwane may decide to impose a restriction penalty on the service provider by prohibiting the service provider from doing business with the public sector for a period not exceeding 10 years.

23.4 Should Polokwane elect to impose a restriction on the service provider or any person associated with the service provider, then the service provider will be allowed a time period of 14 days to provide reasons why the envisaged restriction should not be imposed. Should the service provider fail to respond within the stipulated 14 days Polokwane may regard the service provider as having no objection and will then proceed with the restriction.

23.5 Any restriction so imposed as described in 23.4 on any person by Polokwane, will at the discretion of Polokwane, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of Polokwane actively associated.

23.6 If a restriction is imposed, Polokwane shall, within 5 working days of such imposition, furnish National Treasury with the following information:

- (a.) the name and address of the service provider and/or person restricted.
- (b.) the date of commencement of the restriction.
- (c.) the period of restriction, and
- (d.) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

24. **TERMINATION FOR INSOLVENCY**

Polokwane may at any time terminate this agreement by giving written notice to the service provider if the service provider becomes bankrupt or otherwise insolvent. In such an event, termination will be without compensation to the service provider, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to Polokwane.

25. **PATENTS**

The service provider shall pay all royalties and expenses and be liable for all claims in respect of the use of patent rights; trademarks or other protected rights and hereby indemnifies Polokwane against any claims arising thereof.

26. **SUPREMACY OF COUNCIL RESOLUTIONS**

The parties acknowledge that should this Agreement be in conflict with a Council resolution, the Council resolution followed by the terms of reference of bid LED01/2012 shall have preference.

27. **ENTIRE AGREEMENT**

This agreement constitutes the sole record of the agreement between the parties in relation to the subject matter hereof. No party shall be bound by any express or implied

term, representation, warranty, promise or the like not recorded herein. This agreement supersedes and replaces all prior commitments, or representations, whether oral or written, between the parties in respect of the subject matter hereof.

28. **SPECIFIC TERMS OF CONTRACT**

28.1 **Delivery**

28.1.1 the service provider shall deliver the vehicles and machinery as outlined in clause 4.2;

28.1.2 Polokwane's appointed Contract Manager shall inspect the vehicles and machinery and upon the signature of a delivery note acknowledges that:

28.1.2.1 the specified vehicle and machinery are fit for the purpose for which they are required;

28.1.2.2 the specific vehicle and machinery conformed to the order placed in respect thereof;

28.1.2.3 the delivered vehicles and machinery are in good working order and condition and free of any defects;

28.2 **Insurance**

28.2.1 Polokwane shall be responsible for any loss of or damage to, the Vehicles and machinery;

28.2.2 Polokwane shall insure the vehicles and machinery against damage and loss of whatever nature before delivery of the vehicles and machinery;

28.2.3 The insurance must be a comprehensive motor vehicle and other insurance;

28.3 **Accidents**

28.3.1 if a vehicle or machinery is damaged in an accident, Polokwane shall forthwith advise the service provider thereof and simultaneously pursue a claim from its insurer;

28.3.2 Polokwane shall be liable to pay all amounts not covered by its insurer, including but not limited to excess payable on such claim;

28.4 **Maintenance**

28.4.1 The service provider shall provide Polokwane with full maintenance plan;

28.5 **License fees and fines**

28.5.1 the service provider shall arrange the initial registration and licensing of each vehicle and machinery;

28.5.2 Polokwane shall at its costs, obtain a certificate of fitness (COF) for the each vehicle and machinery at least 3 months prior to expiry of registration certificate;

28.5.3 Polokwane shall be liable for all fines and traffic violations incurred in respect of the vehicle and machinery or its operation, provided that such fines and traffic violations are incurred as a result of the wrongfulness, negligence or intent of Polokwane or its employees or any other authorised person operating the vehicle or machinery;

28.5.4 Polokwane shall ensure that the vehicle and machinery does not contravene any law, regulation or by-law, including statutory regulations relating to roadworthy, mechanical and body conditions.

SIGNED at _____ on this _____ day of _____ 2012.

AS WITNESSES:

1. _____
_____ POLOKWANE

2. _____

SIGNED at _____ on this _____ day of _____ 2012.

AS WITNESSES:

1. _____

THE SERVICE PROVIDER

2. _____