

GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES TO THE GAUTRAIN MANAGEMENT AGENCY

1. OBLIGATIONS OF GMA

1.1. GMA agrees and undertakes to:

- 1.1.1. provide all the necessary information that may be reasonably required by the Service Provider, for the provision of the Services;
- 1.1.2. give the Service Provider clear and unambiguous instructions within a reasonable time, as stipulated in the terms of reference, or as agreed between the Parties;
- 1.1.3. promptly render all decisions and approvals required so as not to delay or impede the performance of the Services; and
- 1.1.4. within five (5) days or such earlier period depending on the urgency of the matter, notify the Service Provider of any issues, concerns or disputes with respect to the Services.

2. PERFORMANCE OF THE SERVICES/OBLIGATIONS OF THE SERVICE PROVIDER

2.1. The Service Provider agrees and undertakes that it shall:

- 2.1.1. perform the Services as and when instructed to do so by the GMA, diligently, competently and efficiently;

2.1.2. allocate, when rendering the Services to GMA, the personnel it proposed to GMA in terms of its response to the GMA and/or alternative personnel with similar or more experience as personnel in its proposal may be suggested in the course of project execution subject to GMA approval;

2.1.3. in performing the Services, comply with the GMA's specific instructions, requests and directions as may be given by the GMA from time to time; and

2.1.4. display the utmost good faith to GMA at all times.

2.2. In providing the Services to GMA, the Service Provider shall:

2.2.1. comply with the industry best practices; and

2.2.2. use its best endeavors to develop and promote the business interests, reputation and goodwill of GMA in the execution of the Services.

3. SKILLS TRANSFER PLAN

Where applicable:

3.1. The Service Provider is to implement a Skills Transfer Plan as it form part of terms of reference/scope of work to be carried out.

3.2. The Service Provider is to involve the GMA at all phases of the allocated work and participate with the identified person/s in the execution of its Skills Transfer Plan.

3.3. Failure to implement the Skills Transfer Plan will result in a material breach of this Agreement and the GMA may terminate the Services of the Service Provider.

4. SUPPLIER DEVELOPMENT PLAN

4.1. Where applicable, the Service Provider shall be contractually committed to the Supplier Development implementation plan as proposed and must ensure that the relevant mechanisms and procedures are in place to allow for access to information to measure and verify the Service Provider's compliance with its stated SD commitments.

5. PRICING

- 5.1. In consideration for the Service Provider performing the Services in terms of this Agreement, upon milestones achieved, GMA shall pay the Service Provider, as specified in the payments schedule the service fees at the rates as agreed.
- 5.2. The Service Provider shall only raise an invoice after the GMA signs off on each of the deliverable/acceptance of satisfactory goods.
- 5.3. The Service Provider shall submit, to GMA Accounts (at invoices@gautrain.co.za), all original tax invoices for payment, together with the supporting documents provided by the GMA setting out all work done in terms of the agreed deliverables, time spent, approved disbursements (where applicable) and such other information as may be specified by GMA from time to time in writing. The supporting documents submitted are to be signed off by an authorised signatory from the Service Provider which shall be reviewed and verified by the GMA.
- 5.4. All payments due by GMA to the Service Provider in terms of this Agreement shall be made within 30 (thirty) days of receipt by GMA of the Service Provider's detailed and itemized statement of account and original tax invoice, including supporting documents.
- 5.5. The quoted rates are fixed for the duration of the Purchase Order unless otherwise agreed differently.

6. SUBPURCHASE ORDERS

Where applicable, the Service Provider has been awarded the Purchase Order with subcontractors specified in the bid and this shall not relieve the Service Provider from any liability or obligation under the Purchase Order.

7. DELAYS IN THE SERVICE PROVIDER'S PERFORMANCE

- 7.1. Performance of services shall be made by the Service Provider in accordance with the time schedule as agreed.
- 7.2. If at any time during performance of the Purchase Order, the Service Provider or its subcontractor/s should encounter conditions impeding timely performance of services, the Service Provider shall promptly notify the GMA 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, the GMA shall evaluate the situation and may at its 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 the delivery schedule.
- 7.3. With agreed exception, a delay by the Service Provider in the performance of its delivery obligations may render the Service Provider liable to the imposition of penalties.
- 7.4. Upon any delay beyond the delivery period in the case of Purchase Order deliveries, the GMA shall, without cancelling the Purchase Order, be entitled to purchase goods/service of a similar quality in substitution of the service not rendered in conformity with the Purchase Order at the Service Provider's expense and risk, or to cancel the Purchase Order and buy such goods/service as may be required to complete the Purchase Order and without prejudice to its other rights, be entitled to claim damages from the Service Provider.

8. PENALTIES

If the Service Provider fails to render the service within the period stipulated in the Agreement, GMA shall have the right, unless otherwise agreed upon, in its sole discretion either to deduct as a penalty from the value of the Purchase Order sum an amount of 1.0% (one percent) thereof per day for the period of delay or to claim any damages or loss suffered in lieu of such penalty: Provided that where beneficial use of the completed portion is enjoyed, the penalty shall be applied to the value of the outstanding portion only.

9. DECLARATION OF INTEREST

- 9.1. The Service Provider is requested to submit a declaration of any interests in terms of any other involvement in the Gautrain Rapid Rail Link Project, including interests that may arise from the discharge of responsibilities arising from awarding of pending bids.
- 9.2. In the interests of ensuring provision of professional, objective, and impartial services, in the best interests of the Gauteng Provincial Government, the GMA reserves the right to disqualify a bidder, whose interests in a different capacity that may impair the Service Provider's ability to act objectively and impartially in discharging responsibilities arising from this project.

10. WARRANTY

- 10.1. The Service Provider warrants to the GMA that it:
 - 10.1.1. is able to render the Services in accordance with each of the terms of this Agreement;
 - 10.1.2. is suitably qualified to provide the Services;
 - 10.1.3. shall provide the Services:
 - 10.1.3.1. with due care, skill and diligence in accordance with the standard of care;
 - 10.1.3.2. in accordance with the terms of this Agreement; and
 - 10.1.3.3. in compliance with all applicable laws and regulations.

11. CONFIDENTIALITY

- 11.1. For purpose of this Agreement, "Confidential Information" means:
 - 11.1.1. the terms of this Agreement;
 - 11.1.2. information or material proprietary to or deemed to be proprietary to the Party;
 - 11.1.3. information designated as confidential by the Party;

- 11.1.4. information acquired by the other Party solely by virtue of provision of the Services;
 - 11.1.5. trade secrets of the Parties; and
 - 11.1.6. all forms of storage or representation of the Confidential Information including, but not limited to, loose notes, diaries, memoranda, drawings, photographs, electronic storage and computer printouts.
- 11.2. Confidential Information excludes any confidential information, or any portion thereof, which:
- 11.2.1. from the date on which any of such information becomes publicly available without any breach of this Agreement by either Party;
 - 11.2.2. is disclosed to either Party by a third party without breach of this Agreement by either Party or the third party of any obligation of confidentiality or non-use towards the Parties or is furnished to a third party without restriction on disclosure or use;
 - 11.2.3. was known to either Party prior to its receipt from the other Party and was not previously acquired from either Party under an obligation of confidence;
 - 11.2.4. is developed by either Party independently of any disclosures previously made by the other Party;
 - 11.2.5. is disclosed with the other Party's prior written consent; and
 - 11.2.6. is required to be disclosed by either Party by order of the court, other legal process or other professional standard.
- 11.3. The Parties agree that Confidential Information disclosed to the other Party by the disclosing Party shall be used by the other Party solely for the provision of the Services.
- 11.4. The Parties shall carry out their obligations hereunder using the same degree of care used in protecting and safeguarding their own proprietary information.

- 11.5. The Parties shall not use the Confidential Information of the other Party for any purpose other than the lawful carrying out of their obligations under this Agreement.
- 11.6. The confidentiality obligations in this Clause 11 remain in effect indefinitely, provided that the obligations of confidentiality shall remain in effect indefinitely in respect of any Confidential Information that constitutes a trade secret of the Disclosing Party or is otherwise proprietary to the Disclosing Party.

12. CHANGE MANAGEMENT

- 12.1. If any of the following events or circumstances occurs (each, a "Change Event"), the Service Provider will be entitled to a Change Order (as defined below):
- 12.1.1. the Service Provider is requested to perform any services that are not expressly included in the Services ("*Additional Services*");
 - 12.1.2. the Service Provider is unable to perform the Services in accordance with the agreed schedule for any reasons that are outside of the Service Provider's control;
 - 12.1.3. any of the information provided by GMA in connection with the Services or the Project prior to the date of the Agreement is determined to be incomplete or inaccurate in any material respect;
 - 12.1.4. there is any material change to the project or the related facilities; or
 - 12.1.5. there is a force majeure event or a change in any applicable laws, regulations or rules or the interpretation thereof.
- 12.2. Notwithstanding the foregoing, (a) the Service Provider will not be entitled to a Change Order to the extent that a Change Event results from a breach by the Service Provider of the Service Provider's obligations under the Agreement.

- 12.3. A "Change Order" means a written agreement between the Parties modifying the terms of the Agreement, including price and schedule, to the extent fair and reasonable in the circumstances as a result of the occurrence of a Change Event. If either Party submits a Change Order request to the other Party, the other Party shall, within seven (7) days or receipt of the request, either accept the request and enter into the related Change Order or provide detailed written reasons for rejecting the request. No work must proceed without official approval of Change Order by GMA. .

13. BREACH AND TERMINATION

- 13.1. Should either of the Parties fail to comply with any provision of this Purchase Order, the innocent Party shall send a letter of demand to the other Party (a party in default and hereinafter referred to as the Defaulting Party), demanding compliance with such provision and should the Defaulting Party, after a period of fourteen (14) days of the date of receipt of such written notice, remain in default, the innocent Party shall be entitled to, without prejudice to any other rights it may have:
- 13.1.1. claim specific performance from the Defaulting Party and/or claim such damages as it may have suffered; or
 - 13.1.2. discharge and execute the Defaulting Party's obligations on its behalf and recover the costs and disbursements incurred in respect thereof from the Defaulting Party; or
 - 13.1.3. cancel this Purchase Order forthwith and claim all damages that it may have suffered from the Defaulting Party.
- 13.2. Either Party may terminate this Purchase Order forthwith by a written notice to the other, effective from the date of Service of such notice, if:
- 13.2.1. there is a persistent breach by the other Party of any provisions of this Purchase Order which expressly entitles the Party not in breach to terminate the Purchase Order; and
 - 13.2.2. there is a material breach by the other Party of any provisions of this Purchase Order which is not remediable, or if it is remediable has not been remedied within 30 (thirty)

days of the service of a written notice to the defaulting Party specifying the breach and the required remedies.

13.3. The Parties may further terminate this Purchase Order, upon giving five (5) days written notice to the other Party, on occurrence of any of the following:

13.3.1. upon commencement of any action, for the dissolution and/or liquidation of the other Party. This includes take overs, mergers and amalgamations, unless agreed to in writing by the Parties; or

13.3.2. if a Party receives a court order to be placed under judicial management, business rescue or to commence liquidation procedures; or

13.3.3. a Party commits an act of insolvency.

13.4. Notwithstanding any provision in this Purchase Order or in law, the GMA reserves the right to terminate the Purchase Order or temporarily defer the provisioning of the goods/services, or any part thereof, at any phase with immediate effect on written notice of 30days to the Service Provider, should the GMA in its sole and absolute discretion decide not to proceed with or to defer the provisioning of the goods/services;

13.5. In the event of termination of the services in accordance with Clause 13.4 hereof, the Service Provider will be paid for such services which have already been rendered.

14. LIMITATION OF LIABILITY AND INDEMNITY

14.1. Under no circumstances shall a Party be liable for any indirect, consequential, punitive or like damages which may arise pursuant to this Purchase Order.

14.2. The Service Provider indemnifies and holds GMA harmless against all loss, liability, damage or expense of whatsoever nature and howsoever arising, any claims or liabilities which are attributable to or caused by the negligent or intentional act/s or omissions of the Service Provider and/or any of its employees and/or agents in performing (or failing to perform, as the

case may be) its duties and rendering the services (or failing to render the services, as the case may be) in terms of this Agreement.

- 14.3. Similarly, GMA indemnifies and holds the Service Provider harmless against all loss, liability, damage or expense of whatsoever nature and howsoever arising which the Service Provider or any person and/or third party may suffer as a result of any claims or liabilities which are attributable to or caused by the negligent or intentional act/s or omissions of the GMA and/or any of its employees and/or agents in performing (or failing to perform, as the case may be) its duties and rendering the services (or failing to render the services, as the case may be) in terms of this Agreement.
- 14.4. To the maximum extent permitted by law and notwithstanding and superseding anything to the contrary in the Agreement:
 - 14.4.1. Clause 10.1.3 sets out the Service Provider's sole warranty in respect of providing the Services;
 - 14.4.2. the Service Provider undertakes to re-perform at its cost any Services that fail to comply with the standard of care detailed in Clause 10.1.3.1;
 - 14.4.3. Clauses 14.4.1 and 14.4.2 set out the Service Provider's sole obligation;
 - 14.4.4. the aggregate liability of the Service Provider in respect of all deliverables in this project shall be limited to 100% of the fees in respect of the all deliverables in this Purchase Order;
 - 14.4.5. the Service Provider has no liability to GMA for any losses, damages or costs that can be construed as an indirect, special, punitive or consequential losses, damages or costs; and
 - 14.4.6. any claim, action or proceeding against the Service Provider in connection with the Agreement, including any warranty claims under Clauses 14.4.1 and 14.4.2, must be

made within 12 months of the earlier of completion of the Services and termination of the Agreement.

15. INTELLECTUAL PROPERTY

- 15.1. The Service Provider shall disclose to GMA all data, reports, research and work ("the Works") eligible for copyright made by it during the course of rendering its Services in terms of this Agreement.
- 15.2. The ownership of the copyright in such Works shall irrevocably vest in GMA and the Service Provider hereby waives in favour of GMA any rights in and to such works which may accrue to it arising out of such works, as such works have been specifically commissioned by GMA.
- 15.3. The copyright in and to such works made by the Service Provider during the course of the provision of the Services under this Agreement, shall vest in GMA irrevocably, and the Service Provider shall have no right in respect of the Works, except as may specifically be granted to the Service Provider by GMA in writing.
- 15.4. None of the Intellectual Property Rights in GMA's trademarks and brands shall be used by the Service Provider for any purpose without GMA's prior written consent.
- 15.5. The GMA will retain all Intellectual Property Rights in the Deliverables or services executed by the Service Provider under this Agreement. Any work, service or product developed as part of this Agreement by the Service Provider will be owned wholly by the GMA and all intellectual property rights under such work, service or product will be equally owned by the GMA, excluding the Service Provider's Background Intellectual Property owned or possessed by the Service Provider or any of its affiliates and used by it in fulfilling obligations under the Agreement. However, Service Provider shall ensure, where possible, that GMA is granted free, non-exclusive and perpetual licence to use Background Intellectual Property for the purpose of this agreement.

16. NO ASSIGNMENT

Neither Party shall assign nor purport to assign any of its rights or obligations in terms of this Purchase Order, without the prior written consent of the other Party.

17. WAIVER

Any waiver of any provision or condition of this Purchase Order must be in writing and signed by both Parties, and is effective only to the extent specifically set forth in such writing.

18. NON-EXCLUSIVITY

Nothing in this Purchase Order shall be construed as creating an exclusive relationship between the Service Provider and the GMA, and the Service Provider may continue to provide other services or services of a similar or identical nature to other clients from time to time, provided that the Service Provider does not utilize or disclose the Confidential Information of GMA in the provision of such services, and provided also that the provision of such services will not result in a potential conflict of interest.

19. AMENDMENTS TO AGREEMENT

No amendment to this Agreement shall be valid or have any force or effect unless reduced to writing and signed by duly authorised representatives of both parties.

20. DISPUTE RESOLUTION

20.1. In the event that the Parties are unable to resolve their dispute, such dispute shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA.

20.2. Either Party to this Agreement may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.

20.3. The provisions of Clause 20.1 shall not preclude either Party from obtaining urgent interim relief from a court of competent jurisdiction.

20.4. The arbitration referred to in 20.2 shall be held:

20.4.1. at Johannesburg;

20.4.2. immediately and with a view to it being completed within 60 (sixty) days after it is demanded; and

20.4.3. through the medium of English.

20.5. The Parties irrevocably agree that the decision in arbitration proceedings:

20.5.1. shall be final and binding upon the Parties;

20.5.2. shall be carried into effect; and

20.5.3. may be made an order of any court of competent jurisdiction.

20.5.4. Notwithstanding any dispute which may exist between the Parties and which is subject to resolution in accordance with the foregoing, neither Party shall, pending the outcome of the dispute, delay the provision of any of their obligations in accordance with this Agreement, except in cases where the dispute relates to the continuation/termination of the Agreement, or the core of its existence.

21. FORCE MAJEURE

21.1. Neither Party shall be liable for any failure to fulfill its obligations under this Agreement if and to the extent that such failure is caused by any circumstances beyond its reasonable control, including but not limited to flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or acts of God, provided that any Party affected by such circumstances shall notify the other Party thereof as soon as is reasonably possible in the circumstances.

21.2. Should a Party be unable to fulfill a material part of its obligations under this Agreement for a period in excess of 60 (sixty) days due to circumstances beyond its control, as contemplated in Clause 21.1, the other Party may, in its sole discretion, cancel this Agreement forthwith by written notice.

22. NOTICES

22.1. Notices in terms of this Agreement shall be in writing and may be delivered by facsimile, by hand, or by registered mail, to the facsimile or addresses of the parties specified on the Purchase Order.

- 22.2. Notice will be deemed to have been given:
- 22.2.1. in the case of hand delivery, upon written acknowledgment or receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
 - 22.2.2. in the case of a facsimile, twenty four (24) hours after successful transmission; and
 - 22.2.3. if posted by registered post to the Party's address in terms of this Clause, seven (7) days after posting.

23. SURVIVAL OF AGREEMENT

The parties acknowledge and agree that the undertakings given in relation to Confidential Information and dispute resolution shall survive the termination of this Agreement and shall continue to be in force until such time as the Confidential Information becomes public knowledge other than by breach of this Agreement and until any disputes hereto have been disposed of.

24. SEVERABILITY

If the whole or any part of a provision of this Agreement is void, unenforceable or illegal, the whole or that part (as the case requires) of that provision shall be severed and the remainder of this Agreement shall have full force and effect provided that such severance does not amount to rewriting this Agreement or basically altering the nature of this Agreement.

25. RESPONSIBLE PERSONS

- 25.1. The Parties shall nominate specific persons as their contact persons for the purposes of a specific Agreement.

26. MEASUREMENT OF PERFORMANCE

- 26.1. The contact persons of the Service Provider and the GMA shall have regular meetings to review performance against agreed service levels and provide feedback concerning reasons for non-conformance to service levels where applicable.
- 26.2. Non-conformance will be addressed in terms of Clause 8 and 13 of this Agreement.

27. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the Parties for the provision of Services by the Service Provider. Any prior arrangements, agreements, representations or undertakings are superseded by this Agreement.

28. GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

By accepting our Purchase Order, the Service Provider accepts these General Terms and Conditions of Contract and is deemed to acknowledge that it has made itself thoroughly familiar with all conditions governing this Purchase Order and GMA will recognise no claim for relief based on an allegation that the Service Provider overlooked any such condition or failed to properly take into account for the purpose of calculating quoted prices or otherwise.