

ANNEXURE A

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**GAUTRAIN
CONCESSION AGREEMENT
SCHEDULE 21
FORM OF APPOINTMENT
OF INDEPENDENT SOCIO-ECONOMIC MONITOR**

between

**GAUTENG PROVINCIAL GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
(Province)**

and

**SIHAMBAMOBILITY PROPRIETARY LIMITED
(To be renamed *SIHAMBAMOBILITY (RF) PROPRIETARY LIMITED*)
(Concessionaire)**

Form of Appointment of the Independent Socio-Economic Monitor

**GAUTENG PROVINCIAL GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, acting through
the GAUTRAIN MANAGEMENT AGENCY**

and

**SIHAMBBA SONKE MOBILITY PROPRIETARY LIMITED
(To be renamed *SIHAMBBA SONKE MOBILITY (RF) PROPRIETARY LIMITED*)**

and

[INDEPENDENT SOCIO-ECONOMIC MONITOR]

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PARTIES:

This Agreement is made on _____20_____ between:

- (1) **GAUTENG PROVINCIAL GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, acting through the GAUTRAIN MANAGEMENT AGENCY (the GMA);**
- (2) **SIHAMBAMBA SONKE MOBILITY PROPRIETARY LIMITED (To be renamed SIHAMBAMBA SONKE MOBILITY (RF) PROPRIETARY LIMITED)** with company registration number 2024/445225/07 (the **Concessionaire**) which expression shall include its permitted successors and assigns; and
- (3) **[•]** with company registration number **[•]** (the **Independent Socio-Economic Monitor**) or such other person appointed pursuant to the terms of this Agreement.

WHEREAS

- A. The Gauteng Provincial Government of the Republic of South Africa, acting through the Department of Roads and Transport (the **Province**) and the Concessionaire have entered into the Concession Agreement for the provision of the System.
- B. The terms of the Concession Agreement require that the Province and the Concessionaire jointly appoint the Independent Socio-Economic Monitor.
- C. The GMA was duly established by the Province in terms of the GMA Act, 2006 (No. 5 of 2006), to undertake the responsibilities of the Province in terms of the Concession Agreement. The GMA is accordingly entering into this Agreement on behalf of the Province.
- D. The Independent Socio-Economic Monitor is required to perform the obligations set out in this Agreement pertaining to the Concessionaire's compliance with the requirements of Schedule 15 (*Socio-Economic Development Obligations*) to the Concession Agreement, and prepare reports in relation to any review or monitoring carried out by it in performing such obligations.
- E. The GMA, the Concessionaire and the Independent Socio-Economic Monitor have agreed to enter into this Agreement for the purposes of setting out the terms upon which the Independent Socio-Economic Monitor is appointed for the duration of this Agreement.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION AND DEFINITIONS

- 1.1 For the avoidance of doubt, terms defined in the Concession Agreement shall have the same meaning in this Schedule 21 (*Form of Appointment of Independent Socio-Economic Monitor*).
- 1.2 References in this Schedule 21 (*Form of Appointment of Independent Socio-Economic Monitor*) to clauses shall be construed as references to the clauses of this Schedule 21 (*Form of Appointment of Independent Socio-Economic Monitor*), unless the context otherwise requires.
- 1.3 The following words and phrases shall, when used in this Schedule 21 (*Form of Appointment of Independent Socio-Economic Monitor*), have the meanings assigned to them hereunder, and cognate expressions shall have corresponding meaning, namely:
- 1.3.1 **Additional Fee** means the amounts payable to the Independent Socio-Economic Monitor for the performance of any Additional Services as set out in clause 6 (*Remuneration of the Independent Socio-Economic Monitor*);
- 1.3.2 **Additional Services** means any other services which the Independent Socio-Economic Monitor performs pursuant to clause 7 (*Additional Services*);
- 1.3.3 **AFSA** means the Arbitration Foundation of Southern Africa and if the Arbitration Foundation of Southern Africa ceases to exist or provide the services and publish the rules contemplated in this Agreement, all references to AFSA shall be read as references to its successor(s) in title, and failing a successor(s) in title, such other entity as may be agreed by the Parties;
- 1.3.4 **AFSA Rules for Expedited Arbitrations** means the version of the AFSA Rules for Expedited Arbitrations in force at the date of the notification of the intention to refer a Dispute to arbitration for resolution in accordance with those rules as may be modified;
- 1.3.5 **Appointers** means the GMA and the Concessionaire, and **Appointer** shall mean any one of them as the context requires;
- 1.3.6 **Change in Control** means any change whatsoever in Control, whether effected directly or indirectly;

- 1.3.7 **Commencement Date** has the meaning given to that term in clause 1.6 (*Term*);
- 1.3.8 **Director** means the person named in Annexure 1 (*Details of the Director*) or such replacement person appointed in accordance with clause **5.2.3**;
- 1.3.9 **Dispute** has the meaning given to that term in clause **21.1**;
- 1.3.10 **Fee** means the amounts stated in clause **6** (*Remuneration of the Independent Socio-Economic Monitor*) payable to the Independent Socio-Economic Monitor in consideration of the performance of the Services;
- 1.3.11 **Parties** means the parties to this Agreement and **Party** means any one of them, as the context requires;
- 1.3.12 **Quarterly SED Reports** means the reports prepared by the Independent Socio-Economic Monitor in respect of a relevant Contract Quarter or, where permitted under Schedule 15 (*Socio-Economic Development Obligations*), more than one Contract Quarter, regarding its monitoring, and/or review and/or verification and work otherwise carried out by it and the findings of the Independent Socio-Economic Monitor regarding its activities in terms of this Agreement;
- 1.3.13 **SED Process** means the processes, procedures, systems and related documentation put in place by the Concessionaire for the management, monitoring, recording or capturing relating to the relevant Socio-Economic Development Obligations which shall include without limitation, the accreditation process, data base of accredited vendors, procurement processes, financial management systems and payrolls; and
- 1.3.14 **Socio-Economic Development Requirements** means the requirements on socio-economic development pursuant to the Concession Agreement, contained in Schedule 15 (*Socio-Economic Development Obligations*) to the Concession Agreement.

1.4 Interpretation

1.4.1 Construction

In this Agreement:

- 1.4.1.1 reference to any gender includes any other gender and the singular includes the plural and vice versa;
- 1.4.1.2 the list of contents and the headings to the clauses and parts of this Agreement and to the paragraphs of the annexures are for ease of reference only and shall not affect the construction of this Agreement;
- 1.4.1.3 references to any statute or statutory instrument will, unless the context otherwise requires, be construed as including references to that statute as from time to time amended or to any statute for the time being replacing, extending, consolidating or amending the same and will include any orders, regulations or instruments;
- 1.4.1.4 references to clauses and annexures are to clauses of and annexures to this Agreement;
- 1.4.1.5 the annexures form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.4.1.6 reference to a person includes any individual, firm, unincorporated association, body corporate or public authority;
- 1.4.1.7 words preceding include, includes, including and included shall be construed without limitation by the words which follow these words unless inconsistent with the context, and the rule of interpretation known as *ejusdem generis* shall not apply; and
- 1.4.1.8 references to R or Rand means the lawful currency of the Republic of South Africa as at the date hereof.

1.5 **Inconsistency**

To the extent of any inconsistency between the provisions of this Agreement and those of the annexures, the provisions of this Agreement shall (save where the contrary is expressly provided) prevail. The Independent Socio-Economic Monitor acknowledges and agrees that the terms of the Concession Agreement take precedence over and supersede the terms of this Agreement.

1.6 **Term**

Subject to any other provision to the contrary, this Agreement shall commence on [•] (the **Commencement Date**) and terminate on the fifth (5th) anniversary of the Commencement Date.

2. **APPOINTMENT OF INDEPENDENT SOCIO-ECONOMIC MONITOR**

2.1 The GMA and the Concessionaire hereby appoint and the Independent Socio-Economic Monitor hereby agrees to perform the following functions:

- 2.1.1 review the Concessionaire's records including any monitoring or audits conducted by the Concessionaire, to verify compliance with the Socio-Economic Development Requirements;
- 2.1.2 at the request of either Party monitor the implementation, or conduct audits to verify the compliance by the Concessionaire with the Socio-Economic Development Requirements in such manner as it reasonably considers appropriate;
- 2.1.3 prepare reports in relation to any of the review or monitoring carried out by it in terms of its functions pursuant to the terms of this Agreement;
- 2.1.4 at the request of either Party attend meetings as are relevant for the compliance with the Socio-Economic Development Requirements, and/or the services to be provided by the Independent Socio-Economic Monitor in terms of this Agreement;

- 2.1.5 review the reports prepared by the Concessionaire in each Contract Quarter in terms of Schedule 15 (*Socio-Economic Development Obligations*) to the Concession Agreement on the Actual Total Quantum and any other information or records of the Concessionaire that is made available to the Independent Socio-Economic Monitor pertaining to the Socio-Economic Development Obligations in such Contract Quarter to verify the information submitted by the Concessionaire with regard to the relevant Socio-Economic Development Elements and shall in that regard apply such verification procedures that the Independent Socio-Economic Monitor reasonably considers appropriate to verify such information; and
- 2.1.6 the scope of services, that are more fully detailed in annexure 3 (*Scope of Services*),
- (together the **Services**) all in accordance with the terms of this Agreement.
- 2.2 The Independent Socio-Economic Monitor shall undertake, as Additional Services and subject to the provisions of clause 7 (*Additional Services*) relevant to Additional Service, the following:
- 2.2.1 at the written request of the GMA and unless otherwise agreed in writing, at the cost of GMA, which request shall be contemporaneously notified to the Concessionaire, such further work in addition to the Services, for the purpose of verifying the compliance with the Socio-Economic Development Requirements including without limitation verification of additional information from the Concessionaire relating to the Socio-Economic Development Requirements where the GMA believes that the scope of the work contemplated in the Services is insufficient for purposes of verifying the Actual Total Quantum and/or the Concessionaire's records or plans that have been made available to the Independent Socio-Economic Monitor in terms of this Agreement or the GMA in terms of the Concession Agreement or the SED Processes;

- 2.2.2 at the written request of the Concessionaire and unless otherwise agreed in writing, at the cost of the Concessionaire, additional work in addition to the Services, where:
- 2.2.2.1 the Actual Total Quantum within the respective SED Elements indicated in the Quarterly SED Reports have been identified as materially incorrect by the Independent Socio-Economic Monitor and the Concessionaire wishes to rectify the material misstatement of that element and to resubmit the relevant information by way of a subsequent version for that particular Contract Quarter;
- 2.2.2.2 the SED Processes implemented by the Concessionaire have been identified as materially incorrect by the Independent Socio-Economic Monitor, and the Concessionaire wishes to rectify the SED Processes and to request the Independent Socio-Economic Monitor to review the improved SED Processes; and
- 2.2.2.3 material changes have been made to the SED Processes implemented by the Concessionaire for purposes of managing compliance with or complying with Schedule 15 (*Socio-Economic Development Obligations*) to the Concession Agreement and the Independent Socio-Economic Monitor is requested to review the changed SED Processes.
- 2.3 The Appointers shall act in good faith towards the Independent Socio-Economic Monitor at all times and the Independent Socio-Economic Monitor shall act in good faith towards the Appointers at all times.
- 2.4 The Independent Socio-Economic Monitor shall at all times be independent of the Appointers and shall not have advised or consulted with either of them at any time prior to its appointment as Independent Socio-Economic Monitor.

3. **METHOD OF PERFORMANCE OF INDEPENDENT SOCIO-ECONOMIC MONITOR'S DUTIES**

- 3.1 The Independent Socio-Economic Monitor shall perform all of its obligations under this Agreement fully and faithfully in accordance with the terms of this Agreement and the Independent Socio-Economic Monitor agrees that each of the Appointers is relying and generally continues to rely on the professional skill and care of the Independent Socio-Economic Monitor in the performance of all of its obligations under this Agreement and that it shall owe a duty of care to each of the Appointers in relation thereto.
- 3.2 If, in the performance of any of its obligations under this Agreement, the Independent Socio-Economic Monitor is required to exercise a discretion as between any of the Appointers, then the Independent Socio-Economic Monitor shall at all times act objectively and impartially and shall in no circumstances place the interests of any one Party above the other Party's interests.
- 3.3 If, in the performance of any of its obligations under this Agreement, the Independent Socio-Economic Monitor seeks or is obliged to seek the approval or agreement of any of the Appointers to any matter or issue, then the giving or confirming of the same shall not in any way derogate from the Independent Socio-Economic Monitor's obligations under this Agreement nor diminish any liability on the part of the Independent Socio-Economic Monitor for breach of such obligations and no enquiry, inspection, comment, report, consent, decision or instruction at any time made or given by or on behalf of the Appointers shall operate to exclude or limit the obligations of the Independent Socio-Economic Monitor to exercise all the reasonable skill, care and diligence required by this Agreement or to comply with the obligations contained in this Agreement.
- 3.4 The Independent Socio-Economic Monitor warrants to each of the Appointers that it has exercised and covenants that it shall continue to exercise, in the performance of all of its obligations under this Agreement, all the reasonable skill, care and diligence as may reasonably be expected of a suitably qualified and competent professional rendering the Services and/or Additional Services and experienced in projects of a similar scope and complexity as the Project.

- 3.5 The Independent Socio-Economic Monitor covenants to each of the Appointers that in the performance of all of its obligations under this Agreement it shall comply with:
- 3.5.1 all Legal Requirements; and
 - 3.5.2 directions, instructions or requests relating to the Land or in pursuance of the same given or made by the person responsible from time to time for security and/or safety of the Land (or relevant part thereof) whilst the Independent Socio-Economic Monitor is present at the Land.
- 3.6 The Independent Socio-Economic Monitor shall be provided with access to:
- 3.6.1 all parts of the Land and to all places from which the works of the System are carried out; and
 - 3.6.2 all records, information and personnel of the Concessionaire or any of the persons contracted by the Concessionaire or any of their sub-contractors to carry out any works or functions in relation to the System,
- on notice given in a reasonable period in advance, as it may reasonably require or as contemplated in annexure 3 (*Scope of Services*) to this Agreement for the purposes of carrying out the Services and all purposes ancillary or related to this Agreement.
- 3.7 In the performance of all of its obligations under this Agreement, the Independent Socio-Economic Monitor shall have full regard to any relevant requirements and/or obligations of the parties to the Concession Agreement, a copy or relevant extracts of which shall be provided by the Concessionaire to the Independent Socio-Economic Monitor. The Independent Socio-Economic Monitor shall perform all of its obligations under this Agreement in such manner and at such times that no act, omission or default of the Independent Socio-Economic Monitor in relation thereto shall constitute or cause a breach by either one of the Appointers or both of the Concession Agreement.

- 3.8 Without prejudice to clause **3.7** and clause **4** (*Monitoring and Inspection*), the Independent Socio-Economic Monitor shall:
- 3.8.1 liaise and co-operate with the Appointers (and any of their respective advisors) and promptly and in good time provide each of them with all such information in its possession in relation to the Socio-Economic Development Requirements as they may from time to time reasonably require;
 - 3.8.2 attend all meetings at which material issues in relation to the implementation by the Concessionaire of Schedule 15 (*Socio-Economic Development Obligations*) to the Concession Agreement are to be discussed;
 - 3.8.3 give to the Appointers not less than two (2) Business Days prior notice of its intention to issue any report in relation to the Services;
 - 3.8.4 have due regard to any written representations made to it by either the GMA's representative and/or Concessionaire's representative (the Party making the representation having previously sent the others a copy), in respect of any matter connected with the conduct of audits or review by the Independent Socio-Economic Monitor, or the issue of any report, provided that nothing in this clause **3.8.4** shall in any way fetter the discretion of the Independent Socio-Economic Monitor (acting in accordance with the requirements of the Concession Agreement and its obligations under this Agreement) as to whether any report should properly be issued; and
 - 3.8.5 provide copies of all reports to each of the Appointers forthwith upon their issue.
- 3.9 The Independent Socio-Economic Monitor acknowledges that nothing contained in this Agreement shall prejudice or affect its liability in delict to any of the Appointers.

- 3.10 The Independent Socio-Economic Monitor shall not make or purport to make any alteration or addition to or omission from the System (including, without limitation, the setting of performance standards) or issue any instruction or direction to the Concessionaire or any sub-contractor or professional consultant employed or engaged in connection with the Project or consent or agree to any waiver or release of any obligation of the Appointers, as applicable, under the Concession Agreement or of any sub-contractor or professional consultant employed or engaged by the Concessionaire, in connection with the Project. The Independent Socio-Economic Monitor shall perform all its duties under this Agreement but not so far as they override its professional responsibility and in particular not so as to exclude the exercise of independent judgment.

4. **MONITORING AND INSPECTION**

4.1 **Inspection**

- 4.1.1 In order for the Independent Socio-Economic Monitor to be in a position to carry out the functions referred to in clause **2.1** above, the Independent Socio-Economic Monitor shall at all reasonable times for the duration of this Agreement, be entitled to examine, inspect, measure the manner in which the Concessionaire, or any of its sub-contractors or persons engaged in relation to the operation and management or maintenance of the Project complies with the requirements of Schedule 15 (*Socio-Economic Development Obligations*) to the Concession Agreement.
- 4.1.2 The Concessionaire shall give the Independent Socio-Economic Monitor full opportunity to carry out inspections as contemplated in this clause **4.1**, including providing records, access, facilities, permissions and safety equipment, and procuring that any of the persons who are engaged in relation to the Project activities, relevant to the Socio-Economic Development Requirements, provides similar opportunity to the Independent Socio-Economic Monitor. No such activity shall relieve the Concessionaire from any obligation or responsibility.

5. INDEPENDENT SOCIO-ECONOMIC MONITOR'S CORPORATE MATTERS AND PERSONNEL

5.1 Corporate Matters

- 5.1.1 The Independent Socio-Economic Monitor warrants to the Appointers that it shall as at the Commencement Date be comprised of the following shareholders, holding shares in the percentages as indicated below:
- 5.1.1.1 [•];
- 5.1.2 For the duration of this Agreement, the Independent Socio-Economic Monitor shall notify the Appointers forthwith on becoming aware of any change in the legal ownership from time to time of the Independent Socio-Economic Monitor or of its shareholders, and shall provide to the Appointers any information which any of the Appointers may reasonably require (and which the Independent Socio-Economic Monitor is reasonably able to provide) relating to any person which from time to time has acquired, or which it is aware proposes to acquire, a legal or beneficial interest in the Independent Socio-Economic Monitor.
- 5.1.3 The Independent Socio-Economic Monitor shall obtain the Appointers' written consent prior to any Change in Control from time to time of the Independent Socio-Economic Monitor. No Change in Control of the Independent Socio-Economic Monitor shall for the duration of this Agreement be effected without the prior written consent of the Appointers, which consent shall not be unreasonably withheld. The Appointers shall act reasonably in exercising their discretion when considering the Independent Socio-Economic Monitors request for their consent for a Change in Control.
- 5.1.4 Any failure by the Independent Socio-Economic Monitor to comply with the requirements of clause **5.1.2** and **5.1.3** shall for purposes of clause **13** (*Termination of Independent Socio-Economic Monitor's Engagement by Independent Socio-Economic Monitor*) constitute material breach.
- 5.1.5 The shareholders of the Independent Socio-Economic Monitor shall be jointly and severally liable with the Independent Socio-Economic Monitor to at all times provide adequate resources required to meet and/or perform the obligations of the Independent Socio-Economic Monitor in terms of this Agreement.

5.2 Personnel

5.2.1 The Independent Socio-Economic Monitor shall forthwith appoint:

5.2.1.1 the Director to direct and control the overall performance by the Independent Socio-Economic Monitor of the Services and act as the primary contact and liaison with the Appointers, and

5.2.1.2 such additional personnel that the Independent Socio-Economic Monitor considers appropriate and necessary to appoint for purposes of enabling the Independent Socio-Economic Monitor to carry out the Services.

5.2.2 The Director shall be empowered to act on behalf of the Independent Socio-Economic Monitor for all the overall performance by the Independent Socio-Economic Monitor of the Services.

5.2.3 The Independent Socio-Economic Monitor shall not replace the Director without the prior written approval of the Appointers acting jointly (which approval shall not be unreasonably withheld or delayed) as to the fact and identity of such replacement.

6. REMUNERATION OF THE INDEPENDENT SOCIO-ECONOMIC MONITOR

6.1 In full consideration of the performance of the Services and any Additional Services in accordance with this Agreement, the Concessionaire shall be liable to pay the Independent Socio-Economic Monitor:

6.1.1 the lump sum Fee;

6.1.2 any Additional Fee pursuant to clause 2.2.2,

in accordance with this clause **6** (*Remuneration of the Independent Socio-Economic Monitor*) and payment thereof shall constitute full reimbursement to the Independent Socio-Economic Monitor of all costs, losses, expenses, overheads or profits suffered, incurred or earned, as the case may be, by the Independent Socio-Economic Monitor in respect of the performance of its obligations under this Agreement whenever they may be performed.

- 6.2 The Independent Socio-Economic Monitor must submit an invoice for the instalment to the Concessionaire at the address set out in and marked for the attention of the person identified in annexure 2 (*Submission of Invoices*) on or after the occurrence of the event allocated to that instalment:

Instalment (R)	Event
Calculated in accordance with the rates set out in annexure 2 (<i>Submission of Invoices</i>)	Review of the records pertaining to the compliance with the Socio-Economic Development Requirements for the first three (3) Contract Months.

and may include in such invoice (provided the same has not previously been included in an invoice) any Additional Fee for any Additional Services which have been completed prior to the date of such invoice. The lump sum Fee and Additional Fee are inclusive of all disbursements, including travel, photocopying, printing and accommodation, save as expressly provided in annexure 2 (*Submission of Invoices*) but exclusive of any applicable Value Added Tax at the rate from time to time in force which shall be additionally payable by the Concessionaire.

- 6.3 Any sum properly included in an invoice submitted under and in accordance with this clause **6** (*Remuneration of the Independent Socio-Economic Monitor*), as the case may be, shall become due and payable on the date falling [TBC] Business Days of receipt of such invoice by the Concessionaire.
- 6.4 The Independent Socio-Economic Monitor acknowledges and agrees that the GMA shall not have any liability to the Independent Socio-Economic Monitor in connection with the performance by the Concessionaire or the Independent Socio-Economic Monitor of its obligations hereunder.
- 6.5 The Independent Socio-Economic Monitor acknowledges and agrees that it shall not be entitled to suspend its performance of the whole or any part of its functions pending the resolution of any dispute between it and the Concessionaire concerning any invoice submitted by the Independent Socio-Economic Monitor or pending payment of any overdue amount that is not in dispute.
- 6.6 The Concessionaire may (without prejudice to any other right or remedy which the Appointers may have under or arising from or pursuant to this Agreement, any other

agreement or statute, at common law or otherwise) deduct or withhold from any money otherwise due to the Independent Socio-Economic Monitor under or pursuant to this Agreement any sum or sums (including any Losses) for which the Independent Socio-Economic Monitor is liable to the Appointers.

7. **ADDITIONAL SERVICES**

Any of the Appointers may appoint the Independent Socio-Economic Monitor to carry out work in relation to the Socio-Economic Development Requirements which is additional to the Services (**Additional Services**) provided that there is no conflict of interest created between the provision of such Additional Services and the performance of the Services.

8. **INFRASTRUCTURE FOR THE INDEPENDENT SOCIO-ECONOMIC MONITOR**

- 8.1 The Concessionaire shall provide the Independent Socio-Economic Monitor with one open plan work station within the offices of the Concessionaire for the purposes of the Independent Socio-Economic Monitor performing its verification services, such obligation being applicable only for the duration such verification services are being performed.
- 8.2 The work station provided in terms of this clause **8** (*Infrastructure for the Independent Socio-Economic Monitor*) shall be provided free of rental, security, cleaning and other building operating costs, subject to and without prejudice to clauses 8.4, 8.5 and 8.6.
- 8.3 For the purposes of performing the verification services the Independent Socio-Economic Monitor shall in addition be allowed access to the use of general meeting room facilities that are generally available in the premises (not including those which are for the exclusive use by an Appointer) subject to compliance with the procedures generally applicable for the use of and access to such meeting rooms and subject always to the prior consent of the Concessionaire.

- 8.4 The Independent Socio-Economic Monitor shall be responsible for:
- 8.4.1 payment of electricity, water and telephone charges attributable to it;
 - 8.4.2 the provision of its own office equipment, materials, vehicles, computer equipment and software.
- 8.5 In order to allow for and achieve integrated electronic communication between the GMA, the Concessionaire, the Independent Socio-Economic Monitor and the Independent Socio-Economic Monitor shall provide the following at its own cost:
- 8.5.1 file server(s) and firewalls within the office of the Independent Socio-Economic Monitor;
 - 8.5.2 a dedicated line or broad band linkage to link up with the Gautrain Project Office as well as the offices of the Concessionaire and the GMA with sufficient band width to enable effective communication,
- to ensure effective communication, document flow and integration with the system being used, from time to time, by the Gautrain Project Office and the GMA for the transfer, management and repository of all the documents relating to the Services, including the Quarterly SED Reports, correspondence, drawings, and any other documents.
- 8.6 The Independent Socio-Economic Monitor will provide and pay for all its own consumables and will generally not rely on any of the Appointers for them.

9. PROFESSIONAL INDEMNITY INSURANCE

- 9.1 Without prejudice to the Independent Socio-Economic Monitor's other obligations under this Agreement or otherwise at law, the Independent Socio-Economic Monitor warrants that it has professional indemnity insurance and covenants that it shall maintain professional indemnity insurance with reputable insurers or underwriters, from the commencement of the Services and for a period expiring no earlier than three (3) years after the completion of the Services and notwithstanding the termination for any reason of the Independent Socio-Economic Monitor's engagement under this Agreement. Such professional indemnity insurance shall be without onerous conditions or unusual excesses to cover each and every such claim or series of claims consequent upon or attributable to the same cause or original source which it may incur under this Agreement, with a limit of indemnity of not less than two hundred percent (200%) of the aggregate fees (excluding VAT) payable to the Independent Socio-Economic Monitor under this Agreement in respect of each and every such claim or series of claims, provided always that such insurance continues to be available to it in the worldwide insurance market upon reasonable terms and at commercially reasonable premium rates.
- 9.2 As and when the Independent Socio-Economic Monitor is reasonably required to do so, the Independent Socio-Economic Monitor shall produce for inspection by any Appointer documentary evidence that the insurance required pursuant to clause **9.1** is being properly maintained subject to the same not constituting a breach of the terms of such insurance.
- 9.3 The Independent Socio-Economic Monitor shall forthwith notify the Appointers if the insurance required by clause **9.1** ceases to be available upon reasonable terms and at commercially reasonable premium rates or if for any other reason the Independent Socio-Economic Monitor is unable to continue to maintain such insurance and (in this event) shall continue to maintain insurance upon such terms and with such a limit of indemnity as may then be so available.
- 9.4 The Independent Socio-Economic Monitor shall not compromise, settle or waive any claim that it may have under such insurance in respect of any professional liability which it may incur under this Agreement without the prior written consent of the Appointers.

10. **CONFIDENTIALITY AND PUBLICITY**

- 10.1 The Independent Socio-Economic Monitor shall not, at all times during the period of its engagement pursuant to this Agreement (save in the proper course of its duties or as may be required by law or any regulatory authority) and at any time after its expiry or termination for any reason, disclose to any person nor otherwise make use of any confidential information (including, but without limitation, information relating to methods and techniques of operation of the System and financial information relating to the Project) of which it has or may in the course of its engagement pursuant to this Agreement become aware relating to the Project, any of the Appointers or otherwise, nor shall it disclose to any person whatsoever (save to its insurance or professional advisers) anything contained in this Agreement, without the prior written consent of the Appointers or in the case relating to one Appointer, the relevant Appointer.
- 10.2 The Independent Socio-Economic Monitor shall not issue any press release or any other public document or make any public statement, in each case relating to or connected with or arising out of the Concession Agreement and/or this Agreement or the matters contained therein (save for any such release, announcement or document which is required to be given, made or published by law) without obtaining the prior written approval of the Appointers (acting jointly) to the contents thereof and the manner of its presentation and publication, provided that such approval shall not be unreasonably withheld or delayed.
- 10.3 The Independent Socio-Economic Monitor shall comply with its obligations under the Legal Requirements relating to the confidentiality and/or use of electronic or other data.

11. **ASSIGNMENT AND SUB-LETTING**

- 11.1 The Independent Socio-Economic Monitor shall not assign its interest in this Agreement or any part thereof nor any right arising hereunder to any person without the prior written consent of the Appointers and only then on terms expressly approved by the Appointers acting jointly and subject to the Independent Socio-Economic Monitor's obligations under this Agreement remaining in full force and effect.
- 11.2 The Independent Socio-Economic Monitor shall not, without the prior consent of the Appointers acting jointly, sub-contract to any person the performance of any of the

Services and where the Appointers give consent to the Independent Socio-Economic Monitor sub-contracting any of its duties pursuant to this clause **11.2**:

- 11.2.1 the Independent Socio-Economic Monitor shall be responsible for the breaches, acts, omissions, negligence or other default of any sub-consultant its agents or employees appointed by the Independent Socio-Economic Monitor as fully as if they were the breaches, acts, omissions, negligence or other defaults of the Independent Socio-Economic Monitor its agents or employees and such sub-contracting shall not modify, release, diminish or in any way affect the liabilities and/or obligations of the Independent Socio-Economic Monitor under this Agreement and/or at law or otherwise; and
- 11.2.2 the remuneration payable to the Independent Socio-Economic Monitor in accordance with clause **6** (*Remuneration of the Independent Socio-Economic Monitor*) shall not be increased by any amount payable to the Independent Socio-Economic Monitor or its sub-consultants pursuant to such sub-contracting.
- 11.3 Each of the Appointers may at any time assign, change or transfer its respective interest in this Agreement and/or any rights arising hereunder (whether or not accrued) to any person upon notice to the Independent Socio-Economic Monitor.

12. **TERMINATION OF INDEPENDENT SOCIO-ECONOMIC MONITOR'S ENGAGEMENT**

- 12.1 If there is:
 - 12.1.1 a material breach by the Independent Socio-Economic Monitor; or
 - 12.1.2 any other breach that is repeated more than once in six (6) calendar months (**Repeated Breach**) by the Independent Socio-Economic Monitor,

which the Independent Socio-Economic Monitor fails to remedy after receiving a twenty (20) Business Days' notice from the GMA (on behalf of the other Appointers and having first notified the other Appointers), specifying the breach and requiring its remedy, the GMA, may then by a further fifteen (15) Business Days' notice to the Independent Socio-Economic Monitor terminate the Independent Socio-Economic Monitor's engagement under this Agreement. The notice from the GMA to the Independent Socio-Economic Monitor referred to in this clause shall, in the case of a Repeated Breach, only be required in relation to the first breach.

- 12.2 Alternatively, the GMA, on behalf of the other Appointers, may by such notice bring to an end the performance of any divisible part of the Services.

- 12.3 The Concessionaire undertakes to the Independent Socio-Economic Monitor that the steps taken by the GMA pursuant to clauses 12.1 and 12.2 are taken on behalf of the Appointers and shall not require the prior consent of the Appointers prior to such steps being taken.
- 12.4 Should the Concessionaire notify the GMA of any breach by the Independent Socio-Economic Monitor, the GMA shall consider such notification and shall determine (acting reasonably) whether to take steps as set out in clause **12.1** and/or **12.2**.

13. TERMINATION OF INDEPENDENT SOCIO-ECONOMIC MONITOR'S ENGAGEMENT BY INDEPENDENT SOCIO-ECONOMIC MONITOR

Subject to clause **15** (*"Step-in" Provisions*), if there is a material breach by any one or more of the Appointers of its or their obligations under this Agreement which it or they, as appropriate, shall fail to remedy after receiving twenty (20) Business Days' notice from the Independent Socio-Economic Monitor (such notice to be copied simultaneously to the other Appointers) specifying the breach and requiring its remedy, the Independent Socio-Economic Monitor may then by a further fifteen (15) Business Days' notice to all the Appointers (subject to clause **14** (*Consequences of Termination of Independent Socio-Economic Monitor's Engagement*)) forthwith terminate its engagement under this Agreement.

14. CONSEQUENCES OF TERMINATION OF INDEPENDENT SOCIO-ECONOMIC MONITOR'S ENGAGEMENT

- 14.1 Upon any termination of the Independent Socio-Economic Monitor's engagement under clause **12** (*Termination of Independent Socio-Economic Monitor's Engagement*) or clause **13** (*Termination of Independent Socio-Economic Monitor's Engagement by Independent Socio-Economic Monitor*), the Independent Socio-Economic Monitor shall be relieved of its obligation to continue with the performance of the Services and any Additional Services and shall take immediate steps to bring to an end the Services and any Additional Services in an orderly manner but with all reasonable speed and economy and shall within ten (10) Business Days deliver to the Appointers copies of all reports, minutes of meetings and other documents prepared or in the course of preparation by the Independent Socio-Economic Monitor in connection with the Project and (if a replacement firm has been appointed to complete the performance of the Services) shall co-operate fully with such replacement to the extent that it is reasonable to do so.

- 14.2 If the Independent Socio-Economic Monitor's engagement under this Agreement is terminated (save other than for any act, omission or negligence of the Independent Socio-Economic Monitor, in breach of this Agreement), the Concessionaire shall (subject to any withholdings, deductions or set-offs which it is entitled to make and to clauses 14.3, 14.4 and 14.5) pay to the Independent Socio-Economic Monitor that part of the Fee which has accrued prior to the date of such termination less the amount of any payments in respect of the Fee previously made by the Concessionaire to the Independent Socio-Economic Monitor under this Agreement. In addition the Appointer whose breach has caused termination of this Agreement, or if all of the Appointers have caused such termination the Appointers jointly and severally, shall in the event of a termination reimburse to the Independent Socio-Economic Monitor the direct costs wholly and necessarily incurred by the Independent Socio-Economic Monitor and resulting from such termination provided always that such termination and such costs have arisen otherwise than by reason of any negligence, omission, breach or default on the part of the Independent Socio-Economic Monitor, its employees or agents, or any sub-contractor or assignee or their respective employees or agents and that the Independent Socio-Economic Monitor has first submitted its account for payment pursuant to this Agreement to the Concessionaire within five (5) Business Days following such termination.
- 14.3 If the Independent Socio-Economic Monitor's engagement pursuant to this Agreement is terminated, the Appointers shall not be liable, save as is expressly set out in clause **14.2**, to the Independent Socio-Economic Monitor for any loss of profit, loss of contracts or other costs, losses and/or expenses arising out of or in connection with such termination. Compensation to the Independent Socio-Economic Monitor in terms of clause **14.2** shall be the sole recourse that the Independent Socio-Economic Monitor shall have arisen out of or in connection with such termination.
- 14.4 Termination of the Independent Socio-Economic Monitor's engagement shall, subject to clause **14.3**, be without prejudice to the rights and remedies of any Party in relation to any negligence, omission or default of any other Party prior to such termination.
- 14.5 The provisions of this Agreement shall continue to bind each Party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.

15. "STEP-IN" PROVISIONS

- 15.1 The Independent Socio-Economic Monitor's right to terminate its engagement under this Agreement or to discontinue the performance of the Services or any Additional Services shall cease if, within the period of twenty (20) Business Days referred to in clause **13** (*Termination of Independent Socio-Economic Monitor's Engagement by Independent Socio-Economic Monitor*), any Appointer not in breach shall give notice to the Independent Socio-Economic Monitor:
- 15.1.1 requiring it to continue the performance of the Services and any Additional Services;
 - 15.1.2 acknowledging that it is assuming all the obligations of the Appointer in breach under this Agreement; and
 - 15.1.3 undertaking to the Independent Socio-Economic Monitor to discharge all payments which may subsequently become due to the Independent Socio-Economic Monitor under this Agreement and paying to the Independent Socio-Economic Monitor any sums which have already become due but which remain unpaid.
- 15.2 On compliance by an Appointer with clause **15.1**, this Agreement shall continue in full force and effect as if the right of termination or discontinuance on the part of the Independent Socio-Economic Monitor had not arisen.
- 15.3 Where an Appointer has given notice in compliance with clause **14** (*Consequences of Termination of Independent Socio-Economic Monitor's Engagement*) and has given an undertaking pursuant to clause **15.1.3** and has assumed responsibility under this Agreement in accordance with clause **15** (*"Step-in" Provisions*), the Appointer in breach shall reimburse and indemnify that Appointer against each and every liability which that Appointer has to the Independent Socio-Economic Monitor by virtue of such undertaking and assumption of responsibility and against any claims, demands, proceedings, damages, costs and expenses sustained, incurred or payable by that Appointer as a consequence thereof insofar as and to the extent that the same has arisen by reason of any breach by such Appointer of their obligations under this Agreement.

16. **VARIATION, WAIVER AND ENTIRE AGREEMENT**

- 16.1 All additions, amendments and variations to this Agreement shall be binding only if in writing and signed by the duly authorised representative of each Party.
- 16.2 No waiver by any Party of any default or defaults by any other Party in the performance of any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character.
- 16.3 This Agreement supersedes any previous agreement or arrangement between the Parties in respect of the Services (whether oral or written) and together with the documents referred to in this Agreement represents the entire understanding between the Parties in relation thereto.
- 16.4 This Agreement is for the sole benefit of the Parties.
- 16.5 Subject to the provisions of clauses 12.1 and 12.2, the Appointers covenant with each other that they shall not waive any rights, remedies or entitlements or take any other action under this Agreement that would or might reasonably be expected to adversely affect the rights, remedies or entitlements of the other without the others prior written consent, such consent not to be unreasonably withheld or delayed.

17. **CUMULATIVE RIGHTS AND ENFORCEMENT**

- 17.1 Any rights and remedies provided for in this Agreement whether in favour of the Appointers or the Independent Socio-Economic Monitor are cumulative and in addition to any further rights or remedies which may otherwise be available to those Parties.
- 17.2 Save as expressly provided otherwise, the rights and obligations of the Appointers shall be several.

18. **SEVERANCE**

If any provision of this Agreement shall be declared invalid, unenforceable or illegal, such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions of this Agreement.

19. **NOTICES**

19.1 **Mode of Service**

Any demand, notice of other communication given in connection with or required by this Agreement shall be made in writing (entirely in the English language) and subject to clause **19.2** (*Addresses for Service*) shall be delivered or sent by electronic mail to, the recipient at its registered office or its address stated in this Agreement, (or such other address as may be notified in writing from time to time).

19.2 **Addresses for Service**

For the purposes of clause **19.1** (*Mode of Service*) any demand notice or other communication served on any Party shall be sent to:

GMA

To: Head of Department, Department of Roads and Transport

Physical address: 45 Commissioner Street,
Marshalltown,
Johannesburg,
Gauteng,
2001

Telephone number: 011 355 7301

Email: japhter.makhafola@gauteng.gov.za

Attention: Japhter Makhafola

Cc: Project Leader

Physical address: 44 Grand Central Boulevard,
Grand Central Ext 1,
Midrand

Telephone number: +27 (0) 11 086 3500

Email: nhlahlas@gautrain.co.za

Attention: Nhlahla Piet Sebola

Concessionaire

To: Chief Executive Officer

Physical address: Midrand Business Park,
Block 5

563 Old Pretoria Main Road,
Midrand,
Gauteng,
1685

Telephone number: 011 267 8000

Email: contact@motseng.co.za

Attention: Vuyo Ntoi

Independent Socio-Physical address: [•]
Economic Monitor Telephone Number: [•]

 Email: [•]

 Attention: [•]

or such other address and/or email address as such Party may notify from time to time.

- 19.3 Any legal process to be served on any of the Parties may be served on it at the physical address specified for it in clause 19.2 (*Addresses for Service*) and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement.
- 19.4 Any notice or other communication to be given to the Parties in terms of this Agreement shall be valid and effective only if in writing, provided that any notice given by email shall be regarded for this purpose as having been given in writing.
- 19.5 A notice which is delivered to a Party by hand at the address specified for it in clause 19.2 (*Addresses for Service*) shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.

- 19.6 Each notice sent by email to a Party's email address specified in clause 19.2 (*Addresses for Service*) shall be deemed to have been received (unless the contrary is proved) within twenty-four (24) hours of transmission if it is transmitted during normal business hours of the receiving Party or within twenty-four (24) hours of the beginning of the next Business Day at the destination after it is transmitted, if it is transmitted outside those business hours.
- 19.7 Notwithstanding anything to the contrary contained in this clause 19 (*Notices*), a written notice or other communication actually received by a Party shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 19.8 A Party may by written notice to the other Parties change its chosen address or email address for the purposes of clause 19.2 (*Addresses for Service*) to any other address, provided that the change shall become effective on the seventh (7th) day after the receipt of the notice.

20. CAP OF LIABILITY AND INDEMNITIES

20.1 Cap on Liability

- 20.1.1 The maximum liability of the Independent Socio-Economic Monitor including any of its employees, directors or any of its sub- contractors in relation to the Services under this Agreement for any damages or losses suffered by any of the Appointers arising from the manner in which the Services are provided by the Independent Socio-Economic Monitor, subject always to the stated exclusions from the limitation on liability listed in clause **20.1.2** below, shall be the higher of:
- 20.1.1.1 two hundred percent (200%) of the aggregate fees (excluding VAT) paid or to be paid to the Independent Socio-Economic Monitor for the Services (calculated as if all the contemplated Services are completed); and
- 20.1.1.2 two hundred percent (200%) of the aggregate fees (excluding VAT) paid or to be paid to the Independent Socio-Economic Monitor in the twelve (12) months preceding the date on which the claim arises.
- 20.1.2 The limitation on the Independent Socio-Economic Monitor's liability as set forth in clause **20.1.1** shall not apply in respect of the following:
- 20.1.2.1 insured losses that are paid under any insurance policy taken by the Independent Socio-Economic Monitor (including any of its employees,

directors or any of its sub-contractors in relation to the Services), to the extent of amounts actually paid by the insurance policy;

- 20.1.2.2 liability in respect of gross negligence, wilful misconduct or fraud on the part of the Independent Socio-Economic Monitor (including any of its employees, directors or any of its sub- contractors in relation to the Services) or for which it and/or any of its employees, directors or any of its sub-contractors in relation to the Services is otherwise responsible or liable for in law;
- 20.1.2.3 indemnified liabilities referred to in clause 21.1.2 for which the Independent Socio-Economic Monitor (including any of its employees, directors or any of its sub-contractors in relation to the Services) is responsible;
- 20.1.2.4 liability for any payment (not in the form of damages) that is due and payable by the Independent Socio-Economic Monitor to any of the Appointers in terms of or pursuant to the terms of this Agreement; and
- 20.1.2.5 liability for any interests on any late payments (of whatsoever nature).
- 20.1.3 The maximum liability of the Concessionaire (including any of their employees, directors or any of their sub-contractors in relation to the Services) to the Independent Socio-Economic Monitor under this Agreement for any damages or losses suffered by the Independent Socio-Economic Monitor arising from the implementation of this Agreement, subject always to the stated exclusions from the limitation on liability listed in clause **20.1.4** below, shall be the higher of:
 - 20.1.3.1 two hundred percent (200%) of the aggregate fees (excluding VAT) paid or to be paid to the Independent Socio-Economic Monitor for the Services (calculated as if all the contemplated Services are completed); and
 - 20.1.3.2 two hundred percent (200%) of the aggregate fees (excluding VAT) paid or to be paid to the Independent Socio-Economic Monitor in the twelve (12) months preceding the date on which the claim arises.
- 20.1.4 The limitation on the Concessionaire's liability as set forth in clause **20.1.3** shall not apply in respect of the following:
 - 20.1.4.1 insured losses that are paid under any insurance policy taken by the Concessionaire in relation to the Project, to the extent of amounts actually paid by the insurance policy;

- 20.1.4.2 liability in respect of gross negligence, wilful misconduct or fraud on the part of the Concessionaire (including any of its employees, directors or any of its sub-contractors in relation to the Services) or for which it and/or any of its employees, directors or any of its sub-contractors in relation to this Agreement are otherwise responsible or liable for in law;
- 20.1.4.3 indemnified liabilities referred to in clause 21.1.2 to third parties for which the Concessionaire (including any of its employees, directors or any of its sub-contractors in relation to the Services) is responsible;
- 20.1.4.4 liability for any payment in respect of the lump sum Fee or the Additional Fee or any other payment (not in the form of damages) that is due and payable by the Concessionaire in terms of or pursuant to the terms of this Agreement; and
- 20.1.4.5 liability for any interests on any late payments (of whatsoever nature).
- 20.1.5 The Appointers shall not have any claim against any of the employees of the Independent Socio-Economic Monitor arising from the execution or omission in relation to the functions, duties, obligations or rights of the Independent Socio-Economic Monitor in terms of this Agreement, except where such a claim arises from such employees' gross negligence, fraud or misconduct.

20.2 Indemnities

- 20.2.1 The Concessionaire indemnifies the Independent Socio-Economic Monitor and undertakes to hold it harmless against any loss, damage, expense or liability incurred by the Independent Socio-Economic Monitor as result of, arising from or in connection with a claim made by a third party arising from or which results from or is connected with a breach by the Concessionaire of its obligations in terms of this Agreement (**ISEM Indemnified Claim**).
- 20.2.2 The Concessionaire's liability in respect of the ISEM Indemnified Claims shall not extend to any claims brought against the Independent Socio-Economic Monitor to the extent that such claim(s) arise out of or in any way caused by the Independent Socio-Economic Monitor's negligence in the performance or non-performance of this Agreement (including acts or omissions of the Independent Socio-Economic Monitor's employees, agents or subcontractors of any tier in their capacity as such).

- 20.2.3 The Independent Socio-Economic Monitor indemnifies the Concessionaire and undertakes to hold it harmless against any loss, damage, expense or liability incurred by the Concessionaire as result of, arising from or in connection with a claim made by a third party arising from or which results from or is connected with a breach by the Independent Socio-Economic Monitor of its obligations in terms of this Agreement (**Concessionaire's Indemnified Claim**).
- 20.2.4 The Independent Socio-Economic Monitor's liability in respect of the Concessionaire's Indemnified Claims shall not extend to any claim brought against the Concessionaire to the extent that such claim(s) of or are in any way caused by the Concessionaire's negligence in the performance or non-performance of this Agreement (including acts or omissions of the Concessionaire employees, agents or subcontractors of any tier in their capacity as such).
- 20.2.5 Each Party (the **Notifying Party**) shall as soon as reasonably practicable notify the other Party of circumstances or incidents or any actual or threatened claim (of whatever nature) in respect of which the Notifying Party may seek to be indemnified and held harmless by the other under the provisions of this Agreement.
- 20.2.6 The Party receiving such notice shall have the right, by giving notice to the Notifying Party of its intention to do so, to conduct all negotiations and court, tribunal or other proceedings in respect thereof.
- 20.2.7 The Notifying Party shall comply with the reasonable requirements of the other Party in respect of such claims and shall not admit, settle or compromise any claim in respect of which it may seek to be indemnified under this Agreement without the consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 20.2.8 Should the Notifying Party admit, settle or compromise any claim by a third party in respect of which it seeks to be indemnified under this Agreement without the prior consent of the other Party, then the other Party's obligation to indemnify the Notifying Party shall be limited to the extent to which the third party claimant would have in law been able to recover such claim from the Notifying Party but for the admission, settlement or compromise thereof. Should the Party receiving notice referred to in clause **20.2.7** not respond within fifteen (15) Business Days to the Notifying Party regarding any proposed admission, settlement or compromise

of any claim that has been notified to it in terms of clause **20.2.7**, then the Party receiving the notice referred to in clause **20.2.7** shall be deemed to have given its consent to the proposed terms of admission, settlement or compromise of a claim, which were communicated to it.

21. **DISPUTES**

- 21.1 Any matter or issue in dispute between the Parties in the widest sense whatsoever arising out of or connected with this Agreement, its implementation, performance, interpretation or termination (a **Dispute**) shall be resolved as expressly provided for in this clause **21** (*Disputes*).
- 21.2 When a Dispute arises between the Parties they shall endeavour in good faith to resolve the Dispute amicably.
- 21.3 Should the Parties fail to resolve the Dispute amicably in accordance with clause **21.2** above, then any party to the Dispute shall be entitled to issue a Notice of Dispute to the other Parties to the Dispute. The Notice of Dispute shall contain within it, brief details of the matter in issue and the remedy sought. The Party receiving the Notice of Dispute shall issue within five (5) Business Days of receipt of the Notice of Dispute, its brief response. The representatives of the Parties with working knowledge of this Agreement and those provisions and/or Schedules to the Concession Agreement relating to the Socio-Economic Obligations of the Concessionaire, will meet within ten (10) Business Days of the issue of the response to discuss the matter in an endeavour to amicably resolve the Dispute. They may use whichever means they jointly consider appropriate to resolve the Dispute. An authorised representative of the Province must be invited to attend any meeting in accordance with this clause **21.3**.
- 21.4 If the Dispute is not resolved by amicable settlement within ten (10) Business Days of the first meeting in terms of clause **21.3** above, the Party who served the Notice of Dispute may, by notice to the other Parties to the Dispute, refer the Dispute to be determined by arbitration in accordance with clause **21.5** below.
- 21.5 Any Dispute referred to or to be determined by arbitration as contemplated in clause **21.4** above shall be determined and conducted in accordance with the AFSA Rules for Expedited Arbitrations.

- 21.6 Within ten (10) Business Days of the delivery of the notice under clause **21.4**, the Parties to the Dispute shall appoint a single arbitrator to preside over the arbitration, failing which the arbitrator shall be appointed by AFSA in accordance with the AFSA Rules for Expedited Arbitrations and any costs levied by AFSA in doing so shall be shared equally by the Parties to the Dispute.
- 21.7 The arbitrator's award shall be, subject to the provisions of the AFSA Rules for Expedited Arbitrations, final and binding on the Parties.
- 21.8 Notwithstanding the provisions of this clause **21** (*Disputes*), the Parties shall have the right to seek urgent and/or interim relief for an interdict or other interlocutory relief against the other in an appropriate court having jurisdiction in the Republic of South Africa where the arbitration proceeding contemplated under clause **21.5** above does not have the power to grant the relief required.
- 21.9 No reference of any Dispute to arbitration shall suspend any Party's liability for the due and punctual performance of its obligations under this Agreement. The provisions of this clause **21** (*Disputes*) shall continue to apply to any Dispute notwithstanding the repudiation, termination or expiry of this Agreement.

22. RECORDS AND REPORTS

- 22.1 The Independent Socio-Economic Monitor shall maintain and update records relating to its activities pertaining to the Project including records required to be produced by the Independent Socio-Economic Monitor in terms of this Agreement (**Records**).
- 22.2 The Records shall be kept in good order and in a form satisfactory to the GMA or such other format as from time to time is in common usage, as to be capable of review by the Appointers and their advisors. The Independent Socio-Economic Monitor shall make such Records available for inspection by or on behalf of the Appointers or their advisors at all reasonable times.
- 22.3 The Appointers or their advisors shall be entitled at the time of such inspection to take one (1) copy of any Record at no cost to the Appointers and for that purpose to use such copying facilities as are maintained at the place where the Records are kept.

22.4 The Independent Socio-Economic Monitor shall procure that:

22.4.1 all Records shall be retained for no less than a period of seven (7) years after the end of the year to which such Records relate except where such documents are or continue to be relevant or required for a dispute between the Parties, in which case they shall be kept for the duration of the dispute, beyond the period of seven (7) years or such longer period as required by law;

22.4.2 where the period for the retention of any Records (as referred to in clause **22.4.1**) has expired, the Independent Socio-Economic Monitor shall notify the Appointers as to what it intends to do with such Records. If it intends to dispose of them or subsequently decides to dispose of them, the Independent Socio-Economic Monitor shall notify the Appointers and if either of the Appointers shall, within thirty (30) days of such notice, elect to receive those Records or any part of them, the Independent Socio-Economic Monitor shall without cost to the Appointer requesting the Records deliver up such Records (or, where those Records are required by statute to remain with the Independent Socio-Economic Monitor, copies thereof) to the Appointers requesting the Records in the manner and at the location as the Appointer shall reasonably specify; and

22.4.3 upon termination for whatever reason of the Independent Socio-Economic Monitor's appointment in terms of this Agreement, the Independent Socio-Economic Monitor shall deliver to the GMA, in such manner and at such location as the GMA shall reasonably specify, the original of all Records which are in existence at the date of termination (or, where those Records are required by statute to remain with the Independent Socio-Economic Monitor, copies thereof) or such part of such Records as the GMA may by notice to the Independent Socio-Economic Monitor specify.

22.5 To the extent that the Records are to be created or maintained on a computer or other electronic storage device, the Independent Socio-Economic Monitor shall comply with any reasonable request of the GMA from time to time relating to procedures for the back-up and off-site storage for copies of such Records.

23. **FORCE MAJEURE**

23.1 Subject to other provisions of this Agreement the Independent Socio-Economic Monitor shall not be in breach or otherwise be liable to any of the other Parties in

any manner whatsoever for any failure or delay in performing its obligations under this Agreement due to Force Majeure on the basis that:

- 23.1.1 subject to clause **23.1.4**, the date for performance of the contractual obligation which has been prevented or delayed by the Force Majeure event shall be deemed suspended for so long as such obligation is affected by such Force Majeure event;
- 23.1.2 the Independent Socio-Economic Monitor shall:
 - 23.1.2.1 give written notice to the other Parties as soon as reasonably practicable and in any event within five (5) Business Days, (so far as it is aware at the time of giving the notice) of becoming aware of the Force Majeure event identifying:
 - 23.1.2.1.1 the event(s) of Force Majeure that has occurred;
 - 23.1.2.1.2 the date from which the event has prevented or hindered the Independent Socio-Economic Monitor in the performance of its obligation;
 - 23.1.2.1.3 the obligation affected;
 - 23.1.2.1.4 its best estimate of the date or dates upon which it will be able to resume performance of the affected obligation; and
 - 23.1.2.2 at all times use reasonable endeavours to mitigate the effect of the Force Majeure event;
- 23.1.3 the Independent Socio-Economic Monitor shall give written notice to the other Parties forthwith (upon becoming aware of the same) upon the Force Majeure event ending or being removed or its existence no longer preventing performance of an obligation under this Agreement. The Independent Socio-Economic Monitor shall resume the full performance of those of its obligations no longer affected as soon as possible thereafter;
- 23.1.4 the Independent Socio-Economic Monitor in relying on this clause 23 shall not be entitled to payment from any of the other Parties in respect of extra costs and expenses incurred by virtue of the Force Majeure event.
- 23.2 If and to the extent that as a result of any Force Majeure event occurring, the Independent Socio-Economic Monitor is unable to perform its responsibilities or part thereof contemplated by this Agreement or such performance is disrupted, the Concessionaire shall only be obliged to make payment proportionate to the

functions that the Independent Socio-Economic Monitor is able to carry out and to that end the Parties shall agree the proportionate fee to be payable to the Independent Socio-Economic Monitor in accordance with this Agreement.

23.3 If the recipient of a notice given under clause **23.1.2** disputes that:

23.3.1 an event of Force Majeure has occurred; and/or

23.3.2 the effect of such event of Force Majeure;

then it shall give written notice to the Independent Socio-Economic Monitor within twenty (20) Business Days of the notice given under clause **23.1.2** and the other Party, and in the case of a dispute in respect of the period of extension, stating the grounds on which it disputes such claim and, if neither the notice under clause **23.1.2** nor the notice of dispute under this clause **23.3** has been withdrawn within twenty (20) Business Days of the date of the notice under this clause **23.3**, then the Parties shall deal with the matter in accordance with clause **21** (*Disputes*).

23.4 If the Force Majeure event has an effect or is likely so to have on the rights or obligations of the Independent Socio-Economic Monitor to render financially or practicably impossible the performance of this Agreement or it determined or agreed between the Appointers in terms of the Concession Agreement that it affects the performance of the Concession Agreement, then the Parties shall consult with each other with a view to reaching a solution acceptable to the Appointers and the Independent Socio-Economic Monitor. Should the Parties be unable to reach agreement on the solution within sixty (60) Business Days, either Party may by written notice to the other Parties forthwith terminate this Agreement.

23.5 In the event that any of the Appointers' performance under this Agreement is affected by an event of Force Majeure (as that term is defined in the Concession Agreement), the provisions of clause 27 (*Force Majeure*) of the Concession Agreement, shall apply *mutatis mutandis* to this Agreement.

24. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument.

25. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa. The High Court of South Africa, Gauteng Division, Pretoria (or its successor in title) shall have the exclusive jurisdiction as the court of first instance to settle any disputes which may arise out of or in connection with this Agreement.

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of

**GAUTENG PROVINCIAL GOVERNMENT OF THE
REPUBLIC OF SOUTH AFRICA, acting through the
GAUTRAIN MANAGEMENT AGENCY**

Signatory:

Capacity:

Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of

CONCESSIONAIRE

Signatory:

Capacity:

Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__.

For and on behalf of

INDEPENDENT SOCIO-ECONOMIC MONITOR

Signatory:

Capacity:

Who warrants his authority hereto

ANNEXURE 1
DETAILS OF THE DIRECTOR

Director:

ANNEXURE 2

SUBMISSION OF INVOICES

Details for submission of invoices: Invoices to be submitted monthly and to include a breakdown of the instalments by reference to the events set out at clause **6.2** of Schedule 21 (*Form of Appointment of Independent Socio-Economic Monitor*) to the Concession Agreement and a breakdown of the fees charged accordance with the hourly rates shown below.

The invoices must be submitted to the Concessionaire's representative at the following address

Attention *[Details of the Concessionaire's representative to be inserted]*

[Address for submission to be inserted]

The invoices must also be valid for the recovery of VAT.

Fee rates (hourly): [R] per hour

The above rate is inclusive of all reasonable expenses and disbursements but is subject to VAT at the rate in force from time to time.

ANNEXURE 3
SCOPE OF SERVICES

[To be confirmed]