

FINANCE LEASE AGREEMENT

The parties:-

“MOIPONE ”

Moipone Fleet (Pty) Ltd
895 Francis Baard Street
Arcadia
Pretoria
0007
Registration No: 2002/002808/07
Tel: (012) 741 7810

Signed at _____ on the day of
20.....

Moipone Fleet's Signature:

Names of person signing:and

Designation:

WITNESSES

1. _____

(Full names):
(Identity no.):

2. _____

(Full names):.....
(Identity no.):

“THE MUNICIPALITY”

Moqhaka Local Municipality

Municipal Offices
Hill Street,
Kroonstad
9499

Tel:

Signed at _____ on the.....day of
20.....

The Municipality's Signature:

Names of person signing:and

Designation:

WITNESSES

1. _____

(Full names):
(Identity no.):

2. _____

(Full names):.....
(Identity no.):

1 INTERPRETATION

In this agreement -

- 1.1 unless otherwise indicated or inconsistent with the context, the singular includes the plural and vice versa, a natural person includes an artificial person and vice versa, and any expression which denotes any gender includes the other genders;
- 1.2 clause headings are used for convenience and shall not be used in its interpretation;
- 1.3 the following expressions bear the meanings assigned to them below, and cognate expressions bear corresponding meanings -
- 1.3.1 “agreement” - this agreement and all schedules and addenda hereto;
- 1.3.2 “authorised service provider” - a service provider or dealer appointed by the manufacturer or importer of a vehicle to service and/or repair such vehicle;
- 1.3.3 “bid” – Bid No 3/2/3/2020-2021: Moqhaka Municipality: Appointment of a service provider/s for the supply and delivery of fleet to the Municipality on finance lease for a period of three (3) year (36 months);
- 1.3.4 “commencement date” - in relation to a vehicle, the date of commencement of this agreement in respect of such vehicle as specified in the schedule relating to such vehicle;
- 1.3.5 “contract months” - in relation to a vehicle, the number of contract months specified in the schedule relating to such vehicle, or as amended pursuant to a restructure;
- 1.3.6 “fleet” - all of the vehicles financed by Moipone to the Municipality for the time being in terms of this agreement;
- 1.3.7 “monthly payment” - in relation to a vehicle, the monthly payment payable by the Municipality to Moipone as specified in the schedule relating to such vehicle or as adjusted as provided for herein or amended pursuant to prime rate changes. The monthly payment comprises elements

relating to lease payment and finance charge, and Monthly admin fee for additional services provided by Moipone to the Municipality from time to time in terms of this agreement.

- 1.3.8 “parties” -Moipone, and the Municipality;
- 1.3.9 “penalty interest” - interest at 2% above the prime interest rate quoted by Moipone to its most favoured corporate clients which will be payable in the event that the Municipality opts for monthly billing herein;
- 1.3.10 “prime interest rate” – means variable rate linked to and adjusted with each change in the prime lending rate as publicly quoted from time to time by First National Bank.
- 1.3.11 “schedule” - refers to the specific schedules signed by the Parties evidencing the individual agreement in respect of each individual vehicle;
- 1.3.12 “signature date” - in relation to a schedule, the date on which the last signing of the parties signs such schedule;
- 1.3.13 ”vehicles” - one or more vehicles included or to be included in a schedule together with all optional equipment and accessories as detailed or to be detailed in such schedule and all components and replacement parts which may at any time be added thereto or substituted therein;
- 1.4.1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on a party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.

2. INTRODUCTION

- 2.1 Whereas the Municipality is desirous of leasing the Vehicles as set out in the schedule attached hereto from Moipone and Moipone hereby agrees to lease the Vehicles to the Municipality on the terms and conditions set out herein.

3. RENTAL

- 3.1 Moipone hereby -
- 3.1.1 leases the fleet to the Municipality.
- 3.2 The Municipality acknowledges and agrees that -

- 3.2.1 the vehicles comprising the fleet will be purchased by Moipone at the Municipality's request and will be used for the purpose for which Moipone has been advised only;
- 3.2.3 Moipone does not make and has not made any warranties or representation of whatever nature to the Municipality that the fleet is fit for purpose;
- 3.2.3 Moipone does not make and has not made any warranties or representations of whatever nature to the Municipality in respect of the fleet or to induce the Municipality to enter into this agreement;
- 3.2.3 prior to the signature date, this agreement and each schedule was fully completed and that the particulars set forth therein are true and correct. If all or any of the information relating to a vehicle is not available on the signature date or if any information on a schedule is incorrect, the Municipality hereby authorises Moipone to insert and/or correct such information in the schedule and agrees that such inserted and/or corrected information shall be confirmed with and binding upon the Municipality.
- 3.3 The Municipality acknowledges and agrees that no warranties or representations have been made or given by Moipone to it as to the condition of any vehicle specifically in relation to any latent defects.

4. ACQUISITION OF VEHICLES

- 4.1 The Municipality shall place all orders for vehicles which it wishes to lease in terms of this agreement from Moipone in writing and Moipone shall, at its sole discretion nominate the dealer from which the vehicle shall be procured and purchased. Each such order shall be deemed to constitute an irrevocable order by the Municipality to Moipone to purchase the vehicle for the use and lease by the Municipality of such vehicle in terms of this agreement. Such orders shall not be binding on Moipone unless and until accepted by Moipone in writing, and Moipone shall be under no obligation to accept any such order.
- 4.2. Each vehicle purchased by Moipone pursuant to this agreement shall be described in a separate schedule. Such schedule shall specify, inter alia, a full description of the particulars of the vehicle, the commencement date, the contract months, , the monthly rental, , the termination date and any other fees agreed by the parties and shall be signed on behalf of each of the parties by duly authorised representatives. Moipone shall complete each schedule and shall forward such schedules to the Municipality, which shall be duly signed by the duly authorised representative of the Municipality and who shall accordingly ensure that such signed schedule is returned to Moipone within seven days of receipt thereof.

- 4.3 If Moipone purchases a vehicle pursuant to an order placed by the Municipality, the Municipality shall, in the event that its duly authorised representative subsequently fails and/or refuses to sign a schedule in respect of the vehicle purchased within the seven-day period referred to herein, either pay Moipone;
- 4.3.1 the actual amount of the total disbursements and costs incurred by Moipone together with the penalty interest calculated from the date that such disbursements and costs become due and payable will be payable by the Municipality on demand ; or
- 4.3.2 the full amount as defined in the breach clauses.
- 4.4 This agreement shall operate as a severable and distinct agreement in respect of the vehicle referred to in each schedule and any additional terms and conditions in such schedule shall when completed and signed by or on behalf of the parties be deemed to be incorporated and shall form part of this agreement as regards the lease of the vehicle referred to in that schedule only. Notwithstanding the foregoing, the breach of any one of the separate agreements so constituted shall be deemed to be a breach of all agreements effected in terms of this leasing agreement.
- 4.5 The parties may from time to time add a vehicle or vehicles to the fleet by mutual agreement and by executing the schedule or schedules as described herein.
- 4.6 The Municipality acknowledges that save as expressly provided in this agreement, it shall have no claim of whatever nature (whether for consequential damage or otherwise) against Moipone and/or any of its directors, officers, employees or agents arising out of or attributable to the use by the Municipality of the fleet and/or any defects therein. Without limiting the generality of the foregoing, the Municipality shall not be entitled to avoid or postpone any of its obligations here under, if, after having entered into this agreement, it subsequently transpires that the fleet is, or any vehicles comprising the fleet are, unacceptable to the Municipality for any reason.

5 REGISTRATION, LICENSING AND FINES

- 5.1 Moipone shall arrange the initial registration and licensing of each vehicle and the Municipality shall keep the vehicle registered and licensed until at least three months before the termination date. Such costs shall be included in the monthly rental where applicable, and if not so reflected shall be payable by the Municipality on demand.
- 5.2 The Municipality shall advise Moipone if a renewal licence is not received from Moipone within ten days prior to due date. Moipone shall not be liable in any manner whatever if a renewal licence is delivered by Moipone to the Municipality and is not displayed by the Municipality.

- 5.3. If any parking, speeding or other fine is incurred in respect of a vehicle, unless agreed otherwise, upon Moipone redirecting the fine to the Municipality, the Municipality shall immediately pay the fine, or provide Moipone with sufficient information concerning the driver at that point in time to allow Moipone to complete an affidavit that enables the authorities to address summons to the driver; provided that if any claim for payment of any fine arising out of or in connection with the implementation of this agreement, the vehicle or the use of the vehicle is made against Moipone, then Moipone shall be entitled to pay such fine without entering into the merits of the claim and to recover the amount thereof together with all costs actually incurred by Moipone in respect thereof from the Municipality on demand. Moipone shall be entitled to disclaim liability for any fines sent to it by completing the relevant affidavit in respect of such fine.
- 5.4. The Municipality shall ensure that the vehicle and/or the driving thereof does not contravene any law, regulation or by-law, including statutory provisions relating to road worthy and mechanical and body condition.

6 DELIVERY

- 6.1 The authorised representative of the Municipality shall take delivery of the vehicle from Moipone or the supplier thereof, as the case may be, and delivery or tender of delivery by Moipone or such supplier to the Municipality shall be deemed to constitute good and proper delivery of the vehicle by Moipone to the Municipality.
- 6.2 The Municipality shall, when taking delivery of the vehicle from the supplier, be deemed to be acting as the agent of Moipone for the sole purpose of accepting such delivery on behalf of Moipone from the supplier, so that upon such delivery, ownership of the vehicle shall be transferred to Moipone. Save as specifically authorised in writing by Moipone, the supplier shall act as Moipone's agent for the purposes of delivery of the vehicle to the Municipality only.
- 6.3 The Municipality shall inspect the vehicle before taking delivery and upon signing the delivery note acknowledges that;
- 6.3.1 the vehicle is fit for the purpose for which it is required; and
 - 6.3.2 the vehicle conformed to the order placed in respect thereof; and
 - 6.3.3 the vehicle is in good and proper working order and condition and free of any defects; and

6.3.4 If the vehicle is not a new unregistered vehicle that the vehicle is in a road worthy condition and complies with the conditions as defined in the vehicle return conditions contained herein, and with no apparent repairs, component replacement or routine services due within 90 days of the commencement date in respect of each vehicle.

6.4 The Municipality shall be entitled to raise a penalty equivalent to a monthly rental due to Moipone in the event of late delivery or non-delivery of the vehicle.

6.5 The risk in the fleet shall pass to the Municipality upon the Municipality taking delivery of the fleet in accordance with this Agreement and the respective schedule.

7 OWNERSHIP

7.1. Ownership in and to all or any of the vehicles comprising of the fleet shall at all times including during the existence of this agreement, remain vested in Moipone and its funders.

7.2 Ownership in and to all or any of the vehicles comprising of the fleet shall only be transferred to the Municipality upon the fulfilment of its obligations including but not limited to the full settlement of the finance lease obligations as contemplated in clause 10 of this agreement and any other outstanding charges and payments subject to the written consent of Moipone of such transfer.

7.3 The Municipality must ensure that the vehicles comprising of the fleet are not permanently attached to, or form part of any other property whether movable or immovable and the Municipality undertakes, upon request to obtain a written waiver in this respect from any person from whom Moipone may require such waiver.

7.4 The Municipality may not sell, let, part possession of, alienate or abandon the vehicles comprising of the fleet; or transfer (cede) its rights or delegate its obligations under this Agreement to any third party unless it has obtained Moipone's prior written consent; or allow the fleet to become the subject of any lien, hypothec or attachment by a third party by way of an order of any court.

7.5 In the event that a third party attached the any of the vehicles comprising of the fleet as part of any lien, hypothec or any other encumbrance, then the Municipality undertakes to immediately obtain the release of the vehicles from such a third party.

8 MAINTENANCE OF THE VEHICLES

- 8.1 The Municipality must take reasonable care when using the vehicles and shall not do anything that may affect Moipone's rights in respect of the vehicles, including any warranty or guarantee given by the manufacturer or supplier.
- 8.2 The Municipality must at its own expense ensure that the vehicles are maintained and serviced in accordance with the manufacturer's specifications and such maintenance and servicing is conducted by authorised service providers. The Municipality shall furthermore ensure that the vehicles are generally kept in good working order and condition.
- 8.3 All replacement parts, all of which must be genuine parts, and accessories will form part of the vehicles and will become the property of Moipone, without payment of any compensation to the Municipality.
- 8.4 Moipone or its representatives may at all reasonable times inspect the vehicles on any premises where they are kept.
- 8.5 In the event that the Municipality for any reason requires that Moipone undertake the maintenance of the vehicles, the costs incurred herein by Moipone will be rebilled to the Municipality.

9 MOIPONE'S OBLIGATIONS

- 9.1 Provided that the Municipality is in compliance with all of its obligations in terms of this agreement, Moipone undertakes to -
- 9.1.1 authorise and pay the authorised dealer or service centre the costs of all maintenance services effected to the vehicle in the event that the Municipality for any reason requires Moipone to ensure and/or provide for the maintenance or servicing of any vehicle, which costs shall be rebilled to the Municipality and for which payment thereof must be made within 7 (seven) days;
- 9.1.2 complete all of the services to be rendered by it in terms of this agreement as expeditiously as possible and with minimum inconvenience to the Municipality.
- 9.2 Notwithstanding the provisions of clause 9.1, any request by the Municipality to Moipone to provide for the maintenance or servicing of any vehicles shall be in writing and shall provide Moipone with a reasonable period to comply with such request.

10 DURATION OF THE AGREEMENT

10.1 Notwithstanding the signature date, this agreement shall, in respect of each vehicle commence on the commencement date and shall continue, subject to the remaining provisions of this agreement, for a maximum period of thirty-six (36) months.

11 PAYMENT

11.1 The Municipality shall ensure that it pays to Moipone the monthly lease payments specified in the schedule plus VAT thereon at the prevailing rate as per the provisions of the Bid.

11.2 All payments made by the Municipality to Moipone in terms of this agreement shall unless otherwise stipulated, be made by debit order which shall go off on an account nominated by the Municipality in writing, without deduction or set off of any nature, free of exchange, bank costs and other charges, on a date agreed to by the Parties. The Municipality shall not be entitled to defer or withhold any payment by reason of set off or counterclaim or if the vehicle is defective, damaged, lost, stolen or cannot be used or operated, or for any reason whatever.

11.3 If the Municipality fails to pay on due date any monthly lease payments, damages or any other charges or amounts due or payable to Moipone in terms of this agreement (from whatever cause), such overdue amount shall bear penalty interest from the due date to the date of payment, without prejudice to any of Moipone's rights in law.

11.4 If the Municipality fails to comply with all or any of its obligations under this agreement, Moipone shall be entitled and is hereby authorised, without prejudice to any of Moipone's rights, to carry out any such obligations and to recover the costs of doing so from the Municipality on demand, together with penalty interest charged at 2% above prime interest rate thereon, calculated from the date such costs were incurred by Moipone to the date of payment thereof.

11.5 Moipone shall at all times be entitled, in its sole discretion, to apply any payment made by the Municipality towards the reduction of any indebtedness whatsoever owing by the Municipality to Moipone in terms of this agreement or otherwise.

12 ADJUSTMENT OF MONTHLY PAYMENT

12.1 Moipone shall be obliged, to recalculate the lease payment and adjust the monthly payment stipulated in the schedule in the event that the prime rate changes. Moipone shall give the Municipality notice of the change and/or adjustment in the monthly payment amount as a result of the variation in the Prime interest rate.

13 TRACKING SYSTEM

- 13.1 The Municipality will ensure that a fully assembled mobile tracking system is installed and maintained in respect of all of the vehicles comprising of the fleet.
- 13.2 Moipone shall provide the Municipality with mobile tracking services in the event that the Municipality requires Moipone to provide tracking services.
- 13.3 The Municipality shall grant Moipone access to utilisation reports herein as and when required, specifically with reference to warranty claims.

14 USE OF THE VEHICLE AND OBLIGATIONS OF THE MUNICIPALITY

- 14.1 The Municipality warrants and represents in favour of Moipone that for the duration of this agreement unless agreed to otherwise in writing and signed by the authorised signatories of Moipone-
- 14.1.1 at no time shall any vehicle be situated outside the Republic of South Africa without the specific prior written consent of Moipone, which consent shall not be unreasonably withheld.
 - 14.1.2 the vehicles shall not be loaded in excess of the load or seating capacity specified by the vehicle manufacturer or which is permitted by law;
 - 14.1.3 the vehicles shall only be driven and used by persons holding a valid driving licence to operate the vehicles or vehicles of that type, which licence has not been endorsed for any reason;
 - 14.1.4 the vehicles shall not be driven, at any time, by a person under the influence of intoxicating liquor or drugs;
 - 14.1.5 the vehicles shall not be used in an unroadworthy condition or in a condition which is liable to cause danger to any person or property, nor shall the vehicles be used in any manner constituting a breach of any statutory or other law, nor shall the vehicles be used for the transportation of hazardous materials, including, but not limited to flammable, combustible, acidic, caustic, explosive, or other dangerous materials as defined by regulations promulgated by any authority in the Republic of South Africa .

14.2 The Municipality shall -

- 14.2.1 comply with, and ensure that every person who may at any time use or be in possession of the vehicles complies with the provisions and all of the Municipality's obligations in terms of, or referred to in this agreement;
- 14.2.2 keep and maintain the vehicles in an undamaged and clean, neat condition at all times and shall ensure that they are not neglected, abused or misused and that they are operated in a skilful and proper manner in accordance with the purpose for which they were designed;
- 14.2.3 ensure that the vehicles are, at all times, kept under adequate security and that all reasonable precautions are taken to guard the vehicles against theft or loss;
- 14.2.4 in the event of the Municipality wishing to store the vehicles for an extended period, comply with the requirements relating to storage as set out in the manufacturer's vehicle handbook in respect of each vehicle;
- 14.2.5 immediately advise Moipone by written notice if any claim or action is instituted directly or indirectly against the Municipality regarding ownership, road worthiness or usage of the vehicle. The Municipality hereby indemnifies Moipone against any such claim or action including the costs thereof on an attorney and own client scale. Any amount payable in terms of such indemnity shall be payable in cash on demand;
- 14.2.6 ensure that the vehicle's odometer is not tampered with or unsealed and shall immediately advise Moipone in writing if the odometer has failed or been tampered with or been unsealed and shall forthwith decide for the vehicle to be delivered to an authorised dealer in order that the necessary repair work be carried out. Moipone shall be entitled, at its sole and absolute discretion, to estimate the kilometres travelled by the vehicle during any period that the odometer is out of order or in the event of a breach of the provisions of this clause, and any such estimate which is signed by a manager of Moipone shall, in the absence of manifest error, be final and binding on the Municipality. The Municipality shall pay all the costs of repairing and sealing the odometer on demand.
- 14.2.7 grant Moipone and its representatives' reasonable access and facilities to inspect the vehicle at any time so as to check the operation of the odometer and its reading from time to time, to ensure that the Municipality is maintaining the

vehicle in good repair and condition and generally complying with its obligations in terms of this agreement;

14.2.8 keep the vehicle in its possession and shall not make the vehicle available for use by any other person or body for any reason whatsoever.

14.2.9 take all reasonable steps to minimise damage to the vehicle in the event of a defect or failure occurring to the vehicle.

14.3 No paint, mark or other identification shall be used or displayed on the vehicle, nor shall any alteration, modification or accessory not specified in the schedule be made to or added on to the vehicle, without Moipone's prior written approval. On early termination of this agreement Moipone shall, at the Municipality 's cost (which shall be payable on demand), be entitled (but not obliged) to remove any such paint, mark, identification or alteration, modification or accessory, and to restore the vehicle to its original condition to the reasonable satisfaction of Moipone..

15 TERMINATION ON EARLY SETTLEMENT

15.1 Upon termination of this agreement as result of early settlement, the Municipality shall be liable for the capital balance owing as at the termination date and all other interest levied and payable up to the date of termination. Furthermore, the Municipality shall be liable for any invoice which is due and payable to Moipone as at the date of termination.

16 VEHICLE RETURN ON EARLY TERMINATION

16.1 On early termination of this agreement for whatever reason, the Municipality shall return the vehicle at its own risk and cost to the address of Moipone or Moipone's agent, as advised by Moipone in writing from time to time, in the condition described in clause 17 of this agreement, in default of which the Municipality shall be liable for the costs of all repair work required to restore the vehicle to the required return condition, which repair work shall be determined in accordance with the provisions of this agreement, shall be payable by the Municipality on demand and the Municipality shall continue paying Moipone the monthly rentals until the vehicle is suitably repaired.

16.2 If the Municipality fails to return the vehicle to Moipone on, the date of termination of the agreement or such other date as may be agreed by Moipone in writing, then, without prejudice to any other rights which Moipone may have at law, Moipone shall be entitled at its sole discretion to;

- 16.2.1 restructure the contract by adjusting the lease payment and any or all of the contract months, return date, or
- 16.2.2 to recover from the Municipality a monthly lease payment(pro-rated for periods of less than a month) plus other charges payable by the Municipality in respect of such vehicle, from the return date until the vehicle is returned to Moipone
- 16.3 The return of the vehicle to Moipone in terms of this clause 16 agreement shall include delivery of all licence papers, permits, registration certificates, handbooks, manuals, vehicle identification, all other papers and cards as well as all keys including duplicates and all accessories pertaining to the vehicle when it was originally provided to the Municipality.
- 16.4 At the time of returning a vehicle, a vehicle appraisal form shall be completed by Moipone's appointed agent and a copy of such form will be given to the Municipality or its representative who shall be required to sign it. Both Parties shall be entitled within 5 (five) business days thereafter to fully inspect the vehicle and notify the Municipality of any work required, in addition to that detailed in the vehicle appraisal form, to restore the vehicle to the required return condition as defined herein, which notification, together with the vehicle appraisal form, shall constitute prima facie evidence of all matters stated therein for all purposes whatsoever and the Municipality agrees that the agreement shall continue to run until Moipone has received the vehicle back from any repairer and the vehicle complies with the return conditions.

17 VEHICLE RETURN CONDITION

- 17.1 Upon its return, each vehicle must be in a roadworthy condition and must be in compliance, fair wear and tear accepted, with the following minimum standards -
- 17.1.1 chassis, frame and integral construction members to be free from fractures, inadequate repairs, cracks, looseness or distortion;
- 17.1.2 springs, spring hangers, torsion bars, shock absorbers and steering mechanisms to be in good working order and the suspension anchorages free from fractions and distortion caused by impact damage;
- 17.1.3 body to be sound and free from dents, cracks or rusting or other faults, paint discolouration or colour differences or disfigurements due to impact or accident damage, or inadequate repairs or maintenance, on condition that in the event the cost of repairing any dent, crack, rust or other fault, paint discolouration or colour differences or disfigurement is less than R2 500, 00, cumulatively, the Municipality will not be held liable for the cost of repair.

17.1.4 all doors, door locks, light and lamp stalks or switches, and all window mechanisms and windows to be operating efficiently;

17.1.5 all windows, head lamp and taillight clusters and mirrors to be free from cracks and chips;

17.1.6 upholstery to be clean and be free from tears, holes, stains and unsightly repairs.

17.1.7 tyres, including spare to be those supplied at the last replacement and to be free from damage.

19 BREACH AND TERMINATION

19.1 Moipone shall be entitled, without prejudice to its other rights in law, to forthwith terminate this agreement at any time by giving written notice to the Municipality to that effect, if -

19.1.1 the Municipality fails to pay the monthly lease payment or any other amount due in terms of this agreement and having been advised in writing, fails to rectify such breach within 14 days, or commits, suffers or permits a breach of any other term of this agreement;

19.1.2 the Municipality commits or suffers or permits any act whereby Moipone's rights or interests under this agreement or in any vehicle may be prejudiced or in any manner jeopardised.

19.2 Any termination of this agreement in terms of this clause 19 shall be without prejudice to any claim Moipone may have in respect of any prior breach by the Municipality of the provisions of this agreement.

19.3 Upon termination of this agreement in terms hereof or otherwise -

19.3.1 the Municipality shall forthwith deliver, at its cost, all vehicles comprising the fleet to Moipone in accordance with the return conditions and return arrangements of this agreement;

19.3.2 Moipone shall be entitled to recover from the Municipality forthwith on demand -

19.3.2.1 payment of all monthly lease payments and other charges that are due and payable under this agreement; and

19.3.2.2 all costs and expenses howsoever arising which have been incurred by Moipone in taking possession of the vehicle and/or recovering all amounts due by the Municipality to Moipone in terms of this agreement, including legal costs on the attorney and own client scale and collection commission; and

19.3.2.3 payment of -

19.3.2.3.1 any shortfall or difference which may arise after comparing and/or computing the difference between the market value of the vehicle and the capital balance of the lease as at date of termination.

19.4 If Moipone cancels this agreement pursuant to this breach clause and the Municipality disputes the right to cancel and continues to retain possession of the vehicle, the Municipality shall, pending the determination of such dispute, continue to pay to Moipone on the due date thereof all monthly rentals and other amounts due under this agreement, and the acceptance thereof shall be without prejudice to Moipone's rights. If such dispute is determined in favour of Moipone, any such payments received shall be deemed to be amounts paid by the Municipality on account of damages suffered by Moipone by reason of the termination of the agreement and/or the unlawful holding over by the Municipality in respect of the vehicle.

20 INSURANCE

20.1 The Municipality must ensure that the vehicles are comprehensively insured, at the cost of the Municipality. Proof of the insurance policy must be furnished to Moipone before the Municipality takes delivery of the vehicles.

20.2 The insurance policy referred to in clause 20.1 herein must endure for the duration of this Agreement against all risks that the vehicles are normally insured, for at least the market value of the vehicles. It is thus the Municipality's responsibility to ensure that its insurance risk is adequately covered.

- 20.3 In the event that the Municipality fails to comply with its obligation set out in clause 20.1 and 20.2 above, then Moipone shall have the right, but not the obligation to insure the vehicles in its name and/or the Municipality's name, at the Municipality's expense, with an insurance company nominated by Moipone. This may be specified or deemed necessary by Moipone at its sole discretion, exercised reasonably.
- 20.4 The Municipality must ensure that Moipone is nominated as the first loss payee under the insurance policy herein and requiring that the insurer use the proceeds of any claim to settle the Municipality's obligations to Moipone under this Agreement.
- 20.5 The Municipality must authorise the concerned insurer to make payment if an insured event occurs, to settle the Municipality's obligations to Moipone under this Agreement as a first charge against the proceeds of the policy at any time during the term of this Agreement.
- 20.6 If any insurer rejects an insurance claim for any reason or of the replacement costs of the vehicle is more than the benefits under the Municipality's insurance policy, then the Municipality will have no recourse against Moipone for any loss directly or indirectly incurred.
- 20.7 The Municipality hereby cedes all of its rights, title and interest in and to any proceeds of any insurance claim to Moipone and undertakes to sign all documents necessary to give effect to this transfer. This cession is intended as security for the Municipality's obligations in terms of this Agreement.

21 LOSS OF OR DAMAGE TO VEHICLES

- 21.1 If the vehicles are damaged, destroyed or lost, then the Municipality must immediately notify Moipone in writing and timeously do all that is necessary to procure payment of compensation under any insurance policy to Moipone.
- 21.2 If required by Moipone, the Municipality must repair and reinstate the vehicles at its cost and continue to discharge all its obligations in terms of this Agreement on the due date.
- 21.3 If the vehicles are lost, damaged or destroyed and Moipone and/or the insurer determines that the vehicles are incapable of economic repair, then the Municipality or its insurer must pay the insurance proceeds to Moipone as well as any shortfall which may arise if the insurance proceeds are insufficient to settle the total amount due in respect of the vehicle.

22 RELATIONSHIP

- 22.1 Save as expressly provided in this agreement, nothing contained in this agreement shall create any relationship or partnership, joint venture or agency between the parties and neither party shall hold itself out as the partner or agent of, or of being in a joint venture with, the other.
- 22.2 To the extent that the terms and conditions contained in any prior agreement exist such terms and conditions shall prevail, and the initial agreement entered into between the parties shall be deemed to have been amended accordingly. Subject to such amendment in terms of this agreement, any prior agreements entered into between the parties shall remain in full force and effect.

23 FORCE MAJEURE

- 23.1 If either party is prevented from carrying out any of its obligations as a result of an act of God, strikes, fire, riot, war, embargoes, international restrictions, any order of any international authority or court, any requirements of any authority or other competent local authority, or any other circumstances whatsoever which are not within the reasonable control of such party, such party will be deemed to have been released from its obligations to perform under this agreement to the extent that for so long as it is so prevented from performing and to such extent, this agreement will be deemed to have been suspended for the period concerned, provided that written notice of such inability to perform shall be given in writing by such party to the other. The party claiming force majeure shall give notice to the other party as soon as the force majeure ceases to operate. Should force majeure continue for a period of more than 90 days, then either party shall be entitled forthwith to terminate this agreement by giving written notice to the other party to that effect.

24 JURISDICTION

- 24.1 All matters arising from or in connection with this agreement, its validity, interpretation or termination shall be determined in accordance with the laws for the time being of the Republic of South Africa, and the parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Division for the purpose of any action or other legal proceedings which either of them may institute with regard to any matters or claims arising in terms hereof.

25 DOMICILIUM

25.1 The parties choose domicilium citandi et executandi for the purposes of giving any notice, the payment of any sum, the serving of any process and for all purposes arising from this agreement as follows -

25.1.1 Moipone- the address set out on the face of this document.

Attention: The Chief Executive Officer

25.1.2 The Municipality - the address set out on the face of this document.

Attention: The Municipal Manager

25.2 Either party shall be entitled from time to time, by written notice to the other, to vary its domicilium to any other physical address in the Republic of South Africa, and/or its Fax number.

25.3 A notice sent by either party to the domicilium of the other party ("the addressee") shall be deemed to have been received, until the contrary is proved by the addressee -

25.3.1 on the same day if delivered by hand during the normal business hours of the addressee and signed for by a responsible official;

25.3.2 on the tenth day after posting, if sent by prepaid registered post;

25.3.3 on the first business day after transmission, if sent by Fax

25.4 Notwithstanding anything to the contrary herein contained a written notice or communication in terms of this agreement actually received by either party shall be sufficient and proper notice for all purposes arising out of this agreement notwithstanding that such notice was not sent to or delivered at the domicilium of the addressee.

26 LEGAL COSTS

26.1 Each party shall bear and pay its own costs in relation to the negotiation, preparation, drafting and signing of this agreement.

- 26.2 All legal fees, costs, charges and disbursements (on a scale as between an attorney and own client) incurred by Moipone in enforcing any of the provisions of this agreement, recovering possession of the vehicle, tracing the Municipality or the vehicle and/or in collecting or endeavouring to collect all or any amounts payable by the Municipality to Moipone in terms of this agreement or otherwise, and all collection commissions, storage charges, costs of valuation of the vehicle, costs of sale including costs of restoring the vehicle to a saleable condition, selling commission, dismantling and removal charges and all other fees and charges of a like nature, will be for the account of the Municipality and will be payable forthwith on demand.
- 26.3 For purposes of clarity, all and any storage fees or charges incurred as a result of any failure, refusal or neglect by the Municipality to timeously discharge its obligations hereunder shall be for sole account of the Municipality.

27 DISPUTES

- 27.1. Any disputes between the parties as to whether a vehicle has been returned in the condition contemplated in this agreement or as to the work required to restore a vehicle to such condition shall be referred to a vehicle technical advisor, who shall act as an expert and not as an arbitrator, and whose decision shall be final and binding on the parties, and whose costs shall be borne as determined by him/her.
- 27.2. Furthermore, the Parties undertake to resolve disputes of any kind except those referred to in clause 27.1, above as may arise under this agreement or the interpretation thereof, while in force or after its termination, through *bona fide* negotiations by the Parties' senior management.
- 27.3. Should a dispute remain unresolved after having been referred to the Parties' senior management, and a period of seven (7) days has elapsed, either Party may refer the said dispute for arbitration as contemplated in clause 27.4.
- 27.4. Either Party may refer a dispute for arbitration by giving written notice to that effect to the other Party, provided that the mechanism for resolving disputes referred to in clause 27.2 have been exhausted first and the dispute remains unresolved. A Party claiming a dispute must do so in writing to the other, failing which there shall be no dispute and none will be deemed or inferred. The arbitration must be held in Pretoria, South Africa under the auspices of and subject to the rules and procedures of the Arbitration Foundation of South Africa ("AFSA").
- 27.5. Subject to clause 27.4, the Parties irrevocably agrees that the decision of the arbitrator (including any costs award) will be final and binding on each of them; will be carried into effect; and may be made an order of court on application by either Party.

- 27.6. Either Party may approach a competent Court to set aside an arbitration award if: an arbitrator has misconducted himself in relation to his duties as arbitrator; or an arbitrator has committed any gross irregularity in the conduct of the arbitration proceedings or has exceeded its powers; or an award has been improperly obtained.
- 27.7. Only the Parties and their legal representatives or persons agreed to shall attend the arbitration proceedings contemplated in this clause 27.
- 27.8. Nothing contained or implied in this Agreement will preclude either party from applying to court for an interdict or any other relief of an urgent or temporary nature, pending the decision or award of the arbitrator.
- 27.9. The provisions of this clause 27 shall survive the termination of this Agreement.

28 INDEMNITY

28.1 Moipone shall not be liable to the Municipality or any third party in respect of any loss, liability, damage (whether direct or consequential) or expense which the Municipality or such third party may suffer as a result of or which may be attributable to -

28.1.1 any act or omission, whether negligent or otherwise, of any authorised dealer or any other servicing agent, in relation to the maintenance, repair or servicing of any vehicle;

28.1.2 the personal injury to or the death of any person or the loss of or damage to any property, howsoever caused arising out of the rental and use by the Municipality or its members of any of the vehicles comprising the fleet;

28.1.3 any act or omission by Moipone in the performance of its obligations and the exercise of its rights under this agreement, and the Municipality hereby indemnifies Moipone and its directors, agents, employees against any claim of whatever nature which may be made against any of them arising out of any of the foregoing occurrences.

29 LIMITATION OF LIABILITY

29.1 Moipone shall not be liable for any indirect, incidental, special or consequential damages, including loss of revenue, loss of data or interruption of services, even if Moipone had been advised of the possibility of such loss.

29.2 In no event shall Moipone's liability for direct damages, whether in contract or delict, exceed the fees paid by the Municipality for the twelve months period immediately preceding the event that gave rise to the claim.

30 GENERAL

30.1 This agreement constitutes the entire agreement between the parties in respect of the subject matter herein.

30.2 Neither party shall be bound by any representation, express or implied term, warranty, promise or the like not recorded in this agreement or reduced to writing and signed by the parties or their representatives.

30.3 No addition to, variation, or agreed cancellation of this agreement or any of the annexures or schedules hereto shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

30.4 No indulgence which either party may grant to the other shall constitute a waiver of any of the rights of the grantor.