

SCHEDULE 3

AGREEMENT

ENTERED INTO BY AND BETWEEN

THE MEC RESPONSIBLE FOR ROAD TRAFFIC

as represented by the **Head of Department** (Official)

in the Province of Gauteng

and

Sedibeng District Municipality (testing station proprietor),

Municipality (type of legal entity),

Registration Number:

This Agreement is entered into on the 26 day of November 2020 at Johannesburg by the Gauteng Provincial Government (Province).

1.0 Parties to the Agreement.

The parties to this Agreement are:

- 1.1 the Gauteng Department of Roads and Transport ("the Department") acting for and on behalf of the Gauteng Provincial Government, represented herein by Mr. Mokhele Mampuru, **Head of Department** of the Department of Roads and Transport; and
- 1.2 Sedibeng District Municipality (name of Municipality), a Municipality (type of legal entity), registered in terms of **the Municipal Systems Act 32 of 2000** (name of Act) and all Vehicle Testing Stations under its control ("Testing Station"), represented herein by Stanley Khanyile (name of signatory), in his/her capacity as **Municipal Manager** (legal capacity) of **Sedibeng District Municipality**. (name of legal entity).

2.0 Statement of Purpose of Agreement between the Department and Testing Station

- 2.1 The Department is responsible for the overall administration and management of road traffic matters, including but not limited to the registration and grading of testing stations within the Province
- 2.2 The Department is responsible for ensuring that public safety is not compromised or jeopardized by the operation of un-roadworthy vehicles or

roads within the Province.

- 2.3 The Department is required to ensure that all vehicle testing stations comply with applicable national and provincial laws.
- 2.4 Section 37 of the National Road Traffic Act, 1996 specifies that no person may operate a testing station unless the testing station is registered and graded and that such Testing Station comply with this requirement.
- 2.5 Section 38 of the national Road Traffic Act, 1996 requires that any person desiring to operate a testing station must apply in the prescribed manner to the MEC for the registration of the testing station and such Testing Station must comply with this requirement.
- 2.6 Section 39 of the National Road Traffic Act, 1996 provides for the registration and grading of testing stations and that such Testing Station must comply with this requirement.
- 2.7 Section 40 of the National Road Traffic Act, 1996 provides for the MEC to suspend or cancel the registration of a testing station, where it no longer complies with the requirements of section 39, such Testing Station registration shall be suspended or cancelled in terms of this provision.
- 2.8 The MEC is responsible for developing criteria based on the estimated vehicle population and registered testing stations within a geographical service area to determine whether a testing station is necessary, and the registration of a Testing Station will be based on these criteria.
- 2.9 the purpose of this Agreement is to formalize the relationship by and between the Department and the Testing Station and to establish the terms and conditions, including any restriction, in terms of which the Testing Station is registered and may be operated.

3.0 Definitions. For the purpose of this Agreement, unless the context indicates otherwise, the following definitions are set out for the terms indicated:

"Agreement" means this Agreement.

"Applicant" means a person who requires the examination and testing of a motor vehicle by Testing Station.

"Change of ownership" means any change in the ownership or structure of the legal entity which owns the Testing Station and includes any changes occasioned by the sale, exchange, alienation, cession, hypothecation or disposal of Testing Station.

"Constitution" means the Constitution of Republic of South Africa Act, 1996 (Act 108 of 1996).

"Department" means the Gauteng Department of Transport and Roads

"Examiner of vehicles" means a person:

- (i) who has successfully completed the prescribed course for examiners of vehicles;
- (ii) who is registered in terms of applicable road traffic legislation as an examiner of vehicles;
- (iii) who is employed by the Testing Station as an examiner of vehicles;
- (iv) who does not have a criminal conviction in terms of Schedule 1 of the Crime Procedure Act, 1977 (Act No. 51 of 1977) or any offence related to the issue of roadworthy certificates, roadworthiness certification or the testing of vehicles; and
- (v) whose registration as a vehicle examiner has not been suspended or canceled by a competent authority, except that in the case of a suspension, the MEC may, at its sole discretion, permit the vehicle examiner to be employed after the expiration of the suspension where the Testing Station has made a written request to the MEC, which has given written approval.

"Face value documents" means documents for the testing and certification of roadworthiness of motor vehicles, as prescribed in road traffic legislation.

"Head of Department" means the public servant, who is the accounting officer and head of the Gauteng Department of Roads and Transport as defined in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

"Provincial Road Traffic Act, 1997" means the Provincial Road Traffic Act, 1997 (Act no. 10 of 1997).

"Management representative" means an examiner of vehicles appointed in writing by the Testing Station Proprietor (Municipality) and who:

- (i) has the necessary authority for the responsibility to ensure that the levels of technical and managerial competence required for the successful evaluation of the testing Station are maintained in terms of the relevant Schedules of the National Road Traffic Regulations;
- (ii) is responsible for the day-to-day management of the Testing Station and supervision of staff of the Testing Station; and
- (iii) and from a date to be determined by the Minister, has at least two years proven experience as an examiner of vehicles at a registered vehicle testing station.

"MEC" means the member of the Executive Council in the Province responsible for road traffic, road safety and public transport matters.

"Municipal Manager" means a person duly authorised by a resolution of the Municipality (Resolution Dated

"National Road Traffic Act, 1996" means the National Road Traffic Act, 1996 (Act No. 93 of 1996), including any regulations thereunder.

"NaTIS or eNaTIS" means the National Traffic Information System as defined in the National Road Traffic Act, 1996.

"Official" means the Departmental staff members appointed to this position and who reports to the Head of Department or such other person as may be appointed by the Head of Department in terms of this Agreement.

"Party" means the parties to this Agreement.

"Province" means the Gauteng Province.

"Road Traffic Act, 1989" means the Road Traffic Act, 1989 (Act No. 29 of 1989), including any regulations thereunder.

"Road traffic legislation" means:

- (i) the Road Traffic Act, 1989;
- (ii) the National Road Traffic Act, 1996;
- (iii) the Provincial Road Traffic Act, 1997; and
- (iv) any other relevant national and provincial legislation.

"Roadworthy" in relation to a vehicle means a vehicle which complies with the relevant provisions of the Act and is otherwise in a fit condition to be operated on a public road.

"Roadworthy Certificate" means, in relation to a motor vehicle, a certificate issued in terms of section 42 of the Act.

"Roadworthy Test Sheet" means a form completed in terms of Regulation 141 as shown in Schedule 2 by the examiner of vehicles at the Testing Station.

"SABS" means the South African Bureau of Standards.

"Testing Station" means any testing station under the control of the Municipality within the Municipal Service area.

"Testing Station Proprietor" means a Municipality (legal entity) and in the event of the proprietor not being a natural person, for the purpose of any offence in terms of the National Road Traffic Act, 1996 (Act No. 93 of 1996) of the Agreement, proprietor shall include the Municipal Manager of such Municipality (legal entity).

4.0 Interpretation of Agreement. In this Agreement, unless the context otherwise indicates:

- 4.1 All words and expressions referring to any one gender shall be capable of being construed as a reference to the other gender.
- 4.2 The words signifying to singular shall include the plural and vice versa.
- 4.3 A reference to a natural person shall be capable of being construed as a reference to a jurisdiction person and vice versa.
- 4.4 Words and phrases defined in this Agreement shall bear the meaning assigned to them throughout this Agreement.
- 4.5 Words and phrases used in this Agreement which are defined or used in any statute which applies to the subject matter, professional person, goods or services provided for in this Agreement shall be construed in accordance with the applicable statute or regulations.
- 4.6 Headings of clauses are for convenience only and shall not aid in the interpretation or modification of clauses within the Agreement.
- 4.7 The parties are bound by applicable provisions of the Constitution and shall act in conformance with relevant sections of the Constitution and national and provincial legislation.
- 4.8 This Agreement shall be subject to and interpreted in terms of applicable provisions of the Constitution and in conference with the Constitution, national and provincial legislation and the common law.

5.0 Duration of Agreement.

5.1 This Agreement shall commence on the 26 day of Nov 2020 and shall remain in full force and effect until -

5.1.1 the testing station proprietor (Municipality) notifies the MEC that he or she no longer wishes to operate the testing station; or

5.1.2 the testing station's registration is suspended or cancelled.

6.0 Duties of testing station proprietor (Municipality)

6.1 A testing station proprietor (Municipality) shall comply with and fulfill all the duties of a testing station proprietor (Municipality) as prescribed in regulation 137.

6.2 The testing station proprietor (Municipality) shall provide a -

- 6.2.1 copy of the title deed, offer to purchase or agreement of the premises on which the Testing Station is located;
- 6.2.2 written consent of the Department to obtain a current South African Police Services clearance, reflecting any criminal record and the details and nature of any offence or offences, for:
 - 6.2.2.1 the Management Representative of the Testing Station; and
 - 6.2.2.3 all vehicle examiners employed by or otherwise contracted to the Testing Station,with the Testing Station to pay all costs for the South African Police Services clearance certificate;
- 6.2.3 certified copy of the South African identity documents of:
 - 6.2.3.1 the Testing Station Management Representative; and
 - 6.2.3.2 any examiner of vehicles employed or otherwise contracted by Testing Station, with Testing Station acknowledging that it must provide updated certified copies of South African identity documents within 10 (ten) working days in the event of any change in information reflected in the section 6.2.9;

7.0 Copyright and Ownership of Documents and Materials.

- 7.1 All Roadworthy Test Sheets and Roadworthy Certificates purchased from the Department by the Testing Station, including its employees, agent, in the fulfillment of the terms of this Agreement shall be and remain the sole property of the Department.
- 7.2 The Testing Station proprietor (Municipality), including its employees, agent and subcontractors, shall on oral or written request of the Department, submit any requested documents and materials to the Department within 24 (twenty-four) hours of such request.

8.0 MEC and Departmental Obligations under this Agreement.

- 8.1 The MEC hereby acknowledges that he is responsible for receiving the application of the Testing Station proprietor (Municipality) and determining whether the Testing Station complies with registration requirements and, if it complies with registration requirements, how it should be graded in terms of Regulation 135 to the National Road Traffic Act, 1996.
- 8.2 The MEC or his or her designee shall review monthly reports submitted and advise the Testing Station if he has any queries and the time period within which the Testing Station must respond to a query.

- 8.3 The MEC or his designee may review any and all activities of the Testing Station to ensure compliance with national and provincial legislation and may instruct Departmental staff to conduct an evaluation of the Testing Station at any time.
- 8.4 The MEC or his designee may, in terms of Regulation 136 to the National Road Traffic Act, 1996:
 - 8.4.1 consider the suspension or cancellation of the registration of the Testing Station; and
 - 8.4.2 suspend or cancel the registration of the Testing Station where it has not complied with the National Road Traffic Act, 1996 and give written reasons for the suspension or cancellation in terms of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- 8.5 In the event the MEC suspends or cancels the registration of the Testing Station in terms of section 8.4, the MEC shall terminate this Agreement with immediate effect.

9.0 Breach of Agreement.

Each party shall be entitled to utilize any remedy at law in the event of a breach of this Agreement, provided that written notice, providing for an opportunity to rectify the breach within a reasonable period of time, must be timeously submitted by the aggrieved party to the defaulting party.

10.0 Termination of Agreement

This Agreement shall terminate in terms of clause 5.0.

11.0 Indemnity

- 11.1 The Testing Station proprietor (Municipality), including any person acting for or on behalf of the Testing Station proprietor (Municipality), shall exercise due care and diligence in the performance of its duties in terms of this Agreement and Testing Station shall be liable where it has failed to exercise such due care and diligence.
- 11.2 The Testing Station proprietor (Municipality) has no authority or right to bind the Department and the Testing Station proprietor (Municipality), including any person acting for or on behalf of the Testing Station proprietor (Municipality), shall be liable for any action where it seeks to bind the Department.

12.0 General.

- 12.1 This Agreement replaces any previous written or verbal agreement or contracts entered into by the Department or the Testing Station.
- 12.2 This Agreement constitutes the entire contract between the parties and may only be altered or varied in writing.
- 12.3 No party may be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law.
- 12.4 No alteration of, variation of or amendment to this Agreement shall be of any force and effect unless it is reduced to writing and signed by the parties.
- 12.5 No indulgence or leniency which either party may grant or show the other shall in any way prejudice the granting party or preclude the granting party from exercising any of its rights in the future.

13.0 Domicilium Citandi et Executandi.

- 13.1 Any notice in terms of this Agreement may be hand delivered to the physical addresses of the parties, in which event proof of acknowledgement shall be endorsed upon a copy of the notice together with the name of the recipient and date of receipt, or may be sent by registered post to the postage issued by the relevant postal authority will serve as proof.
- 13.2 the Municipality chooses for the purpose of this Agreement its domicilium citandi et executandi as follows:

Street Address: Corner Beaconsfield
+ Leslie Str
Vereeniging
1939

Postal Address: P.O. Box 471
Vereeniging
1930

Telephone Number: (011) 016 450 3201

Fax Number: (011) _____



13.3 The Department chooses for the purpose of this Agreement its domicilium citandi et executandi as follows:

Street Address: Life Centre B, 45 Commissioner Street, Johannesburg

Postal Address: Private Bag X 83 Marshalltown, 2107


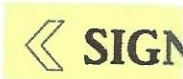
Telephone Number: 011 891 0001

Fax Number: 011 492 0309



14.0 Costs

Each party shall bear its own costs in the negotiation, preparation and finalization of this Agreement.

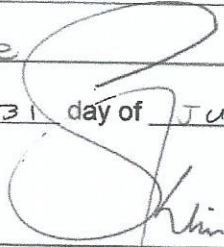
SIGNED AT Johannesburg on the 26th day of November 2020


DEPARTMENT OF ROADS AND TRANSPORT 

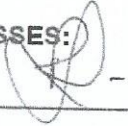
AS WITNESSES:

1. Ablonia Baiyi.
 (print name)
2. Boikanyego Lesego Madisane
 (print name)

SIGNED AT Vereeniging on the 31 day of July 2020


MUNICIPAL MANAGER

AS WITNESSES:

1. BEFILWE B.T. MHLWATIKA
 (print name)
2. BETH PIETERSON
(print name)



(5) If the MEC is not satisfied as to the suitability of the testing station he or she shall refuse to register such testing station, and shall notify the applicant accordingly and shall provide the applicant with the reasons of such refusal in writing.

(6) A person or body of persons whose application to operate a testing station has been refused by an MEC due to the unsuitability of such person or body of persons, may not apply in any other Province for the operation of a testing station as contemplated in regulation 128 until such person or body of persons complies with the requirements of this Act.

[Subreg (6) substituted by GN R359 of 2010 wef 12 May 2010.]

[Reg 129 substituted by GN R589 of 2008 wef 27 May 2009.]

130 Manner of application of approved person or body of persons to register testing station

(1) An application by an approved person or body of persons as contemplated in regulation 129(4) for the registration of a testing station, shall be made on form TSI as shown in Schedule 2, and a management representative and alternative management representative shall be identified in respect of the testing station concerned: Provided that the MEC of a province concerned may exempt a testing station from complying with provisions of this subregulation if he or she determines the area where such station is situated as an area with a small population of motor vehicles.

[Proviso added by GN R359 of 2010 wef 12 May 2010.]

(2) An application as referred to in subregulation (1) shall be accompanied by acceptable identification of the applicant and of the management representatives identified under subregulation (1), and such other documentation as required to complete the agreement as proposed in Schedule 3.

[Reg 130 amended by GN R1066 of 2005 wef 23 November 2005 and substituted by GN R589 of 2009 wef 27 May 2009.]

131 Requirements to be met for registration of testing station

The requirements for registration of a testing station, are —

- a compliance with 'The minimum requirements for testing stations' as shown in Schedule 4;
- b the ability to test and examine a motor vehicle in terms of 'The testing and examination of motor vehicles' as shown in SANS 10047: Testing of motor vehicles for roadworthiness, as contemplated in regulation 140;
- c a signed agreement between the MEC and the testing station proprietor reflecting the information of the agreement as proposed in Schedule 3; and
- d the payment of the fees as determined by the MEC of the province concerned.

[Reg 131 substituted by GN R589 of 2009 wef 27 May 2009.]

132 Manner of registration of a testing station

(1) The MEC shall, upon receipt of an application for registration of a testing station made in terms of regulation 130 with due regard to the evaluation and recommendations of the inspectorate of testing stations, satisfy himself or herself that the testing station concerned complies with the requirements referred to in regulation 131.

(2) If the MEC is satisfied as to the suitability of the testing station in terms of regulations 128 and 130, he or she shall —

- (a) subject to the conditions he or she may deem fit, register and, in terms of regulation 135, grade such testing station;
- (b) record the particulars of such testing station on the register of testing stations;