

SERVICE LEVEL AGREEMENT

MADE AND ENTERED INTO BY AND BETWEEN

DEPARTMENT OF SAFETY AND LIAISON



(Duly represented by Ms E Botes in her capacity as the Accounting Officer)

Southey Chambers Building, Southey Street Kimberley 8300

and

KAREEBERG MUNICIPALITY

(Duly represented by Z.E. Dingile in his capacity as the Accounting Officer)



PREAMBLE

WHEREAS the Department of Safety and Liaison is charged, in terms of the Constitution Act 108 of 1996, the Road Traffic Act 29 of 1989 and the National Road Traffic Act 93 of 1996, with the responsibility of inter alia ensuring road safety as well as vehicle and driver fitness (hereinafter referred to as the Services) in the Northern Cape.

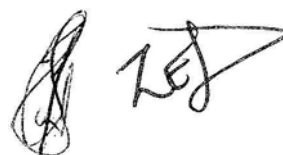
WHEREAS the Department is desirous for the local authorities to provide certain services on its behalf;

AND WHEREAS the Kareeberg Municipality is willing and able to provide the service on behalf of the departm^{ent};

THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. HEADING AND INTERPRETATION

- 1.1 All headings herein are inserted for the sake of convenience and shall not be taken into account in the interpretation of this agreement.
- 1.2 Any reference to the singular may be interpreted to include a reference to the plural and reference to anyone gender shall include the other gender.
- 1.3 Where words have been defined in the body of this agreement, such words shall unless otherwise required by the context have the meanings so assigned to them throughout this agreement.
- 1.4 Any reference to a Party includes that Party's successors;
- 1.5 Any reference to any enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.6 Where any number of days is prescribed it shall unless otherwise specifically stated be reckoned exclusively of the first day and inclusively of the last day of the month.
- 1.7 Any reference to natural persons includes legal persons and *vice versa*; , -



1.8 If any provision in a definition or the recital in this AGREEMENT is a substantive provision conferring rights or imposing duties on any Party, notwithstanding that it is only in the definition or recital clause, effect shall be given to it as if it were a substantive provision in the operative part of this agreement.

2. PARTIES

The parties to this agreement shall be the Northern Cape Department of Safety and Liaison (referred hereto as the "the Department") duly represented by Ms E Botes in her capacity as the Accounting Officer and the Kareeberg Municipality (referred hereto as the "Municipality") duly represented by Z.E. Dingile in his or her capacity as Municipal Manager. This agreement shall upon signature hereof bind parties as well as their employees, agents and / or representatives.

2. DEFINITIONS

"*Business day*" means any day other than a Saturday, Sunday or a day on which banking institution in the Republic of South Africa are customarily closed;

"Constitution" means the Constitution of the Republic of South Africa, Act No. 108 of 1996;

"Legislation" means and includes all applicable national and provincial legislation, and subordinate legislation, including all applicable by-laws and regulations;

"MEC" means a Member of the Executive Council responsible for the Department of Safety and Liaison;

"MFMA" and "PFMA" means the local Government: Municipal Finance Management Act 56 of 2003 and the Public Finance Management Act 1 of 1999 respectively;

"Services" means the services rendered by the Municipality to the department in terms of this AGREEMENT;

"Service Area" means the geographical area in respect of which the Municipality is appointed to render the Services;

"Service Levels" means the levels of service to be achieved by the Municipality in rendering the services under this AGREEMENT;

"RTMC" means the Road Traffic Management Corporation;

"Signature Date" means the date upon which this agreement is signed by the party signing last in time;

"Bank Account" means a financial record or statement of debts, credits transactions etc. where the departmental money shall be stored;

"Separate Bank Account" means a bank account into which funds are deposited and withdrawn.

"Primary Bank Account" means a primary bank account as defined in Section 8 of the MFMA No 56 of 2003.



"Force Majeure Event" means any event over which the parties do not have control but shall not include any labour disputes, strike, lock-out;

4. POSITIVE UNDERTAKINGS

4.1 The parties confirm their distinct complementary and respective roles in the implementation of this AGREEMENT.

4.2 The Parties further commit to collaborate in promoting the objectives of this AGREEMENT

4.3 The Parties are bound by the terms and conditions of this agreement stipulated hereunder, which are the positive undertakings from each party and violation thereof will constitute an event of default and consequently entitle the innocent party to terminate this agreement.

5. APPOINTMENT

5.1 The Department as the service authority hereby appoints the Municipality, as the service provider, who hereby accepts appointment to provide the Services as set out in clause 6 below, within the Service Area as defined in this Agreement, on the terms and conditions as set out herein.

5.2 Neither the appointment of the Municipality in terms of clause 5.1, nor anything in this AGREEMENT, shall affect any existing legislation, by-laws, policies and procedures, in respect of Traffic Services, in existence as of the Effective Date of this AGREEMENT or as they may be amended from time to time, except as specifically set forth herein

5.3 The use by the Municipality of any brand name, trademark or document of the Department shall be in accordance with any branding policies adopted by the Department and amended from time to time.

6. THE SERVICES

6.1 The services to be provided by the municipality in terms of this AGREEMENT shall be the services set forth in this AGREEMENT, and shall include the responsibility for:

6.1.1 The collection of all registration and licence fees in terms of the National Road Traffic Act and to transmit such monies to the Department;

6.1.2 The testing of motor vehicles for the purposes of checking road-worthiness of vehicles;

6.1.3 Issuing of Learners and drivers licenses

6.1.4 Conversion of driver's licenses



- 6.1.5 Supply the Department with the bank reconciliation statements and reconciliation of deposits in respect of all the monies collected on a weekly basis;
- 6.1.6 The Municipalities shall open a separate bank account for the purpose of this AGREEMENT

7. OBJECTIVES OF THE PARTIES

7.1 The parties shall endeavour to work together to further their respective mandate

7.2 In pursuance of the objective of this contract the parties accordingly agree as follow:

7.2 ROLES AND DUTIES OF THE DEPARTMENT

7.2.1 Powers of the Department

The Department shall have the powers, subject to such limitations as contained in the legislation to set, revise and advise the Municipality on the fees to be charged in respect of the Services.

7.3 POWER TO MONITOR PERFORMANCE

7.3.1 The Department shall be entitled to and have the power to continually monitor the performance of the Municipality pursuant to this AGREEMENT and make recommendations in regard thereto.

7.3.2 In performing its supervision role in terms of clause 7.3.1, the department's nominated representative shall conduct regular site inspections and meet with the Municipality's representative on a weekly basis to discuss any recommendations and / or disputes resulting from this AGREEMENT.

7.3.3 In monitoring performance the Department shall be entitled to conduct interviews with Customer/Licence Holders, and undertake user satisfaction surveys or issue such other supervision and monitoring methods as the Department may deem fit.

7.3.4 The Municipality shall render such reasonable assistance as may be necessary to allow the department to exercise its rights in terms of clause 7.3

7.4 SETTINGS OF SERVICE LEVEL KEY PERFORMANCE INDICATORS (KPIs)

7.4.1 It is recorded that the Department, Subject to its mandate, shall act as the authority for the setting of the KPIs in respect of the service level standards for the Services, in consultation with the Municipality. It is accordingly



intended that the Service to be provided by the Municipality shall be rendered in compliance with the requirements of the Department, as set forth in this AGREEMENT. The aim of which is achieving full compliance with the requirements set by the Department.

7.4.2 The Department shall in determining the KPIs, have regard to:

7.4.2.1 any funding constrains;

7.4.2.2 the costs of collecting and reporting performance date;

7.4.2.3 the priorities of Customers/Licence Holder; and

7.4.2.4 the relevance of the indicators to the stake holders including how specific, measurable achievable and timeous these are.

7.5 REVIEW OF SERVICE LEVELS

7.5.1 The parties shall meet within thirty (30) days of the anniversary of the Effective date each year that this AGREEMENT endures to review:

7.5.1.1 The performance by the Municipality of its obligations under this AGREEMENT

7.5.1.2 The Municipality's compliance with the Service Levels applicable in respect of the immediately preceding year;

7.5.1.3 The Service Level Standards and their continued application in respect of the following year; and

7.5.1.4 The achievement of predetermined year-on-year improvement targets.

7.6 MEASUREMENT OF SERVICE LEVELS

The quality if service provided by the Municipality shall be measured in accordance with the KPIs as approved by the Department in its sole discretion.

7.7 ACCESS TO INFORMATION

7.7.1 The Department shall ensure that the minutes of the monthly meetings represent a fair and accurate reflection of what was discussed or agreed upon. The minutes shall be circulated to all in attendance and shall be kept in hard copy and maintained on record.

7.7.2 The Municipality shall' to the extent reasonably practicable, at all times maintain a full and accurate set of records of the Services performed under this AGREEMENT, inclUding complaints received by number, type, data and the response provided, site attendances made, for such periods as shall be determined by the Department after the provision of such service



7.7.3 The Department shall have the right of access to information to satisfy itself to the accuracy of any determination or calculation and generally as to compliance by the Municipality with the terms of this AGREEMENT for the performances monitoring purposes. The Municipality shall, provide the Department with such additional information as the Department may require.

7.8 AUTHORITY TO ISSUE DIRECTIONS

7.8.1 The Department shall be entitled, in certain circumstances to direct the Municipality, through an issuance of a report and or training, to such requirements as in the opinion of the department are material to the performance on the part of the Municipality of its service delivery obligations. This includes implementing corrective action should the Municipality deviate from expected performance.

7.8.2 After receipt of any report from the Department, in the event of such report proposing any alteration in the performance of the Municipality:

7.8.2.1 The Municipality shall within fourteen (14) days after receipt of such report advise the Department as to the remedial measures (if any) it proposes to take in order to comply with the proposals.

7.8.2.2 The Department may within seven (7) business days after receipt of such proposals advise the Municipality in writing as to whether it is satisfied with the proposal and if not what further proposals it considers to be implemented.

7.8.2.3 In the event of any dispute as to the reasonableness or otherwise of any proposals made by the Department such dispute shall be dealt with utilising processes described in the dispute resolution provision set forth below.

8. COMMENCEMENTS AND AGREEMENT REVIEW

8.1 *Commencement*

This AGREEMENT shall commence on the signature Date and shall be subject to review in accordance with the terms and conditions as set out below.

8.2 *Review*

The parties record that this AGREEMENT shall be reviewed annually and as soon after the anniversary date as possible.

9. ENTITLEMENT AND OBLIGATIONS OF THE MUNICIPALITY

Without derogating from the entitlements and obligations of the Municipality in terms of clause 9, the Municipality, shall execute the Services to the reasonable satisfaction of the Department and undertake to comply with each and every obligation which the Department and RTMC may now or in future impose with regard to the provision of the Services, within the Service Area, in terms of the following:



9.1 *Best practice service standards*

Notwithstanding any other requirement of this AGREEMENT, the Municipality shall render the Services in a manner and at a level which is to the reasonable satisfaction of the Department, is financial viable, and in accordance with industry best practice standards.

9.2 *Compliance with the PFMA and MFMA*

The Municipality shall be required to motivate for and manage its financial resources in respect of the Services, in accordance with the Public Finance Management Act and the Municipal Finance Management Act, as may be amended from time to time.

The Municipality shall transmit

9.3 *Duty to transmit monies*

t, on a weekly basis, all monies collected accompanied by proof of payment on behalf of the Department in respect of the Services rendered.

9.4 *Duty to maintain assets*

The Municipality shall for the duration of the AGREEMENT keep and regularly maintain and service the assets allocated to it for performing its tasks under this AGREEMENT, in good order, condition and repair and in proper and efficient working order, fair wear and tear expected.

9.5 *Duty to comply with Legislation*

The Municipality shall comply with all laws and relevant Legislation. Specifically, the Municipality accepts responsibility for the fulfilment of all provision of the National Road Traffic Act 93 of 1996 and regulations issued in terms in terms thereof. An official appointed by the Department may at any time conduct a site inspection to ensure obligations are being fulfilled in this regard.

9.6 *Duty to retain information*

The Municipality shall, to the extent reasonably practicable, at all times maintain a full and accurate set of records of all Services performed under this AGREEMENT for such period of time as agreed to between the parties, it being recorded herein that any information retention requirements imposed on the Department in respect of its obligation to obligation to provide the Services by lawful authority whatsoever shall be binding on the Municipality.

9.7 *Duty to sing confidentiality agreements*

The Municipality shall ensure that new and current users to NATIS sign the confidentiality agreements issued by RTMC and a copy of the signed agreement shall be sent to the Provincial Helpdesk and the relevant Municipality for filling purposes.



10. FINANCIAL RESOURCES

10.1 Compensation for Services Rendered

The Department shall compensate the Municipality for the provision of services as defined in this AGREEMENT, which shall be calculated on a fee equal to ... l.?-p. % of all monies collected by the Municipality in respect of the 'Services.

10.2 Payment Arrangement

It is recorded that the payment for provision of the Services as defined within this AGREEMENT be divided into twelve (12) equal monthly instalments.

11. PERSONNEL

All staff recruitment and determination of remuneration, including salary incentives, bonuses and training shall be undertaken and paid for by the Municipality.

12. BREACH

12.1 Should either party breach the contract by non compliance with any of the provisions of this agreement and fails to rectify such breach within 21 (twenty one) days of the date on which a written notice to rectify such breach was given, then either party shall be entitled to summarily cancel this agreement by written notice without prejudice to any other rights which the aggrieved party may have including BUT not limited to patrimonial damages and / or specific performance against the defaulting party as a result of such breach.

13. FORCE MAJEURE

Neither party shall be liable for any failure to fulfil its obligations under this agreement if such failure is caused by „force majeure event.“

14. DISPUTE RESOLUTION

14.1 Amicable Settlement

The Parties shall use their best efforts and in good faith to resolve amicably all disputes and differences arising between them, out of or in connection with this agreement or its interpretation or its implementation.

14.2 Referral to mediator

If the parties are unable to resolve any dispute or differences within 15 (fifteen) days or such period as the parties may SUBsequently agree, the parties shall refer the dispute or difference to a neutral Mediator. If the parties are unable to agree on the



choice of a Mediator, any party may apply to the President of the Law Society of the Northern Cape Province or another mutually agreed nominating organisation to appoint a Mediator. If the parties accept the recommendation of the Mediator then they shall record such recommendations in an agreement, which shall be legally binding on them.

14.3 Arbitration

14.3.1 If the Parties do not accept the recommendations or corrective steps of the Mediator, the Parties shall refer the dispute or differences in writing to Arbitration within twenty one (21) days. Therefore any arbitration in terms of this agreement shall be conducted in accordance with the Rules of the Arbitration Foundation of Southern Africa, in force from time to time, and the decision taken will be binding and the costs of this shall be determined according to Article 35 of the Arbitration Act 42 of 1965. However nothing precludes any Party from seeking interlocutory relief in any court having jurisdiction pending the institution of appropriate proceedings for the enforcement of any rights under this agreement. The provisions of this clause are separate and distinct from the rest of this Agreement and, accordingly shall remain in effect despite the termination or invalidity for any reason of this Agreement.

14.3.2 Should any dispute arise as described above, the parties shall abide by this AGREEMENT and service delivery and payments shall not be interrupted or discontinued.

15. DOMICILIUM CITANDI ET EXECUTANDI

15.1 The parties choose as their *domicillium citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

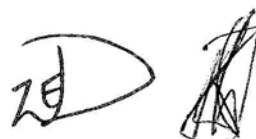
15.1.1 The Department

Physical Address: Southey Chambers Building
Southey Street
Kimberley
8301

Postal Address: POBox 1368
Kimberley
8300

Tel: (053) 839 1700/02

Fax (053) 831 2781



15.1.2 *The Municipality*

Physical Address: Hanau street
CARNARVON
8925

Postal Address: Private Bag X226
CARNARVON
8925

Tel: 053 – 382 3012

Fax: 053 – 382 3142

15.2 Any notice or communication required or permitted to be given in terms of this AGREEMENT shall be valid and effective only if in writing but it shall be competent to give notice by telefax.

15.3 Any party may give notice to any other party who wants to intend changing change its *domicillium citandi et executandi* provided that the change shall become effective only on either of the other party acknowledging receipt of same or the other party positively and objectively establishing proof of such receipt.

15.4 ANY NOTICE TO A PARTY

15.4.1 Sent by prepaid registered post (by airmail if appropriate) in an envelope correctly addressed to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 7th (seventh) business day after posting (unless the contrary is proved);

15.4.2 Delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

15.4.3 Sent by telefax to its chosen telefax number stipulated in Clause 14.2 hereof, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).

15.4.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicillium citandi et executandi*.

16. CONFIDENTIALITY

To the extent that the Parties hereto exchange or possess information to the provision of the service pursuant to this agreement which is excepted from any freedom of information legislation, the Parties hereby unconditionally undertake in favour of each other that each of them will not at any time divulge or disclose to any



person, or permit it to be divulged or disclosed to any person, or to make use in any way whatsoever (other than directly in connection with the fulfillment of the respective rights and obligations set out herein or as may be required by law) of any confidential information without the consent of the party concerned.

17. LEGISLATIVE AND REGULATORY CHANGES

The Parties record that other legislation pertaining to the Service may change or that the Minister of Transport or the Member of Executive Council for Safety and Liaison, may, from time to time, issue regulations governing various aspects impacting on the Services, the provision of Municipal services by Municipalities generally or regulating service provision agreements.

To the extent that anything contained in this AGREEMENT shall be deemed, in so far as possible to be amended accordingly, provided that the remainder of the provisions of this AGREEMENT shall remain valid and effective.

To the extent that the legislative or regulating amendments render any of the preceding provisions of this AGREEMENT ineffective, the Parties agree to renegotiate the provisions of this agreement in good faith, having due regard to such amendments and to the principles contained herein.

18. TERMINATION OF SERVICE

Should the Department so determine, it shall terminate this AGREEMENT, upon such terms and conditions deemed necessary in the circumstances.

18.1 *Duties upon termination*

Upon termination of this AGREEMENT, for any reason whatsoever the Municipality shall, notwithstanding anything to the contrary continued in this agreement, continue to render the services which it would have been required to render but for the termination of this AGREEMENT, for the risk and benefit of the Department, until the Department has arranged for the continued provision hereof.

19. MUTUAL COOPERATION

The parties shall consult from time to time with regard to any assistance or advice that the Municipality may require in connection with fulfilling any of its obligations in terms of this AGREEMENT. The Department shall, to the extent reasonably practicable, provide the Municipality with such information as it may reasonably require within seven (7) business days, in order to comply with any of its obligation in terms of this AGREEMENT.

20. INDEMNITY

The Municipality hereby indemnifies the Department against any claims, which may arise as a result of any willful or negligent action of the Municipality, its employees

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and / or agents in respect of the project and which cause loss or damage to a third party.

21. DOMICILLIUM CITANDI ET EXECUTANDI

The parties choose as their *domicillium citandi et executandi* and for the purposes of giving or sending any notice or certificate provided for or required in terms of this Agreement, the addresses reflect on the face of this Agreement.

22. APPLICABLE LAWS

The parties hereby agree to be bound and adhere to laws applicable to the Republic of South Africa, which include, but are not limited to the Constitution, 1996, the Public Finance Management Act 1999 and Municipal Finance Management Act.

23. WHOLE AGREEMENT

This agreement constitutes the entire Agreement between the parties in respect of the Service and neither party shall be bound by any undertakings, representations, warranties or promises not recorded in the Agreement.

No variation, cancellation, waiver and / or amendment shall be of any force or effect unless agreed by both parties and reduced to writing.

24. GOOD FAITH

The Parties undertake to act in good faith at all times in pursuance of their respective roles in terms of this contract as well as to the spirit and intent of the contract.

25. SIGNATURES

Dated and signed at KIMBERLEY on this day of " 2005.

AS WITNESSES

1

E BOTES
HEAD OF DEPARTMENT

2

Dated and signed at.. on thisday of. " 2005

