

SCHEDULE 3

AGREEMENT ENTERED INTO BY AND BETWEEN THE MEC RESPONSIBLE FOR ROAD TRAFFIC

as represented by _____ (Official)

in the Province of _____
and

_____ (testing station proprietor),

_____ (type of legal entity),

Registration Number _____

This Agreement is entered into on the ____ day of _____ 20__ at _____
by the _____ (Province).

1.0 Parties to the Agreement.

The parties to this Agreement are:

1.1 the _____ ("the Department"), acting for and on behalf of the _____ Provincial Government, represented herein by _____, Head of Department for the _____ Department of Transport; and

1.2 _____ (name of testing station proprietor), (type of legal entity), registered in terms of the _____ (name of Act) under registration number _____ ("Testing Station"), represented herein by _____ (name of signatory), in his or her capacity as a (legal capacity) of _____ (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.

Document B

- 2.2 The Department is responsible for ensuring that public safety is not compromised or jeopardized by the operation of unroadworthy vehicles on 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 Testing Station must comply with this law.
- 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 that Testing Station must comply with this law.
- 2.6. Section 39 of the National Road Traffic Act, 1996 provides for the registration and grading of testing stations and that Testing Station must comply with this law.
- 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 of the National Road Traffic Act, 1996 and that Testing Station must comply with this law.
- 2.8 The MEC is responsible for developing objective 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 Testing Station must comply with the objective criteria.
- 2.9 The purpose of this Agreement is to formalise 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 operate.

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 change 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 _____.

"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 _____ as defined in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Document B

" _____ **Road Traffic Act, _____**" means the Provincial Road Traffic Act, ____ (Act No. _ of ____).

"Management Representative" means the person appointed in writing by the Testing Station Proprietor and who:

- (i) has the necessary authority for and 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; and
- (ii) is responsible for the day-to-day management of the Testing Station and supervision of staff of the Testing Station.

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

"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 developed by and in conjunction with the National Department of Transport.

"Official" means the Departmental staff member 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 _____ 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, ____; 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 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 _____ (name of testing station),
owned by the testing station proprietor at _____ (physical address).

"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 Criminal 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.

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 the 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 juristic 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 conformance with the Constitution, national and provincial legislation and the common law.

Document B

5.0 Duration of Agreement.

- 5.1 This Agreement shall commence on the ____ day of _____ 200__ and shall remain in full force and effect until –
- 5.1.1 the testing station proprietor 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

- 6.1 A testing station proprietor shall comply with and fulfill all the duties of a testing station proprietor as prescribed in regulation 134A.
- 6.2 The testing station proprietor 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, which is attached hereto as Annexure G;
 - 6.2.2 copy of the written resolution from the Municipal Council of the municipality in which the Testing Station is located, supporting the application of the Testing Station, which is attached hereto as Annexure H, provided that the Department shall identify the official empowered to issue such resolution and that the official does not unreasonably delay;
 - 6.2.3 copy of the initial and amended founding statement, partnership agreement, close corporation registration or company registration reflecting the sole proprietor, all partners, all members or all directors, respectively, of the Testing Station, which is attached hereto as Annexure I;
 - 6.2.4 written consent for 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:
 - 6.2.6.1 the sole proprietor, all partners, all members or all directors, as is relevant;
 - 6.2.6.2 the Management Representative of the Testing Station; and
 - 6.2.6.3 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;
 - 6.2.7 South African Revenue Service income tax number in the name of the testing station proprietor for the Testing Station, attached hereto as Annexure J;
 - 6.2.8 South African Revenue Service value added tax number in the name of the testing station proprietor for the Testing Station, which is attached hereto as Annexure K;

Document B

- 6.2.9 municipal levy number in the name of the testing station proprietor for the Testing Station, which is attached hereto as Annexure L;
- 6.2.10 current tax clearance certificate in the name of the testing station proprietor, issued no more than 30 (thirty) days prior to entering into this Agreement, from the South African Revenue Service, which is attached hereto as Annexure M, except that in the event of a delay by the South African Revenue Service in issuing the current tax clearance certificate the Testing Station shall provide written proof of its application for a current tax clearance certificate;
- 6.2.11 current levy clearance certificate in the name of the testing station proprietor, issued no more than 30 (thirty) days prior to entering into this Agreement, from the applicable municipal body, which is attached hereto as Annexure N;
- 6.2.12 certified copy of the South African identity documents of:
 - 6.2.12.1 the Testing Station Management Representative;
 - 6.2.12.2 the **[sole]** proprietor, all partners, all members or all directors, as is relevant; and
 - 6.2.12.3 any examiner of vehicles employed or otherwise contracted by Testing Station,

which is attached hereto as Annexure O, 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 this section 6.2.12;

- 6.2.13 statement identifying any:
 - 6.2.13.1 prior entity providing the same or similar services in which the Testing Station proprietor have had an interest in the 10 (ten) year period prior to entering into this Agreement; and
 - 6.2.13.2 prior activities of a same or similar nature to the Testing Station in which the Testing Station proprietor, have been engaged in the 10 (ten) year period prior to entering into this Agreement,

which statement shall be attached hereto as Annexure S.

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 fulfilment of the terms of this Agreement shall be and remain the sole property of the Department.
- 7.2 The Testing Station proprietor, 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.

Document B

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 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 132 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 134 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 utilise any remedy **[in]** 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, including any person acting for or on behalf of the Testing Station proprietor, 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 has no authority or right to bind the Department and the Testing Station proprietor, including any person acting for or on behalf of the Testing Station proprietor, shall be liable for any action **[taken by the Department to absolve itself from that obligation]** where it seeks to bind the Department.

Document B

- 11.3 The Testing Station hereby indemnifies and [holds] the Department [**harmless**] against any claims of any nature whatever and however arising out of the wilful or negligent action or omission of the Testing Station proprietor or any person acting for and on behalf of the Testing Station proprietor, including any legal costs that may be incurred by the Department in defending any action arising out of this Agreement and instituted against it.

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 acknowledgment 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 nominated postal addresses of the parties, in which event a proof of postage issued by the relevant postal authority will serve as proof.
- 13.2 The Testing Station chooses for the purpose of this Agreement its domicilium citandi et executandi as follows:

Street Address:

Postal Address:

Document B

Telephone Number:

Fax Number:

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

Street Address: _____ Department of Transport

Postal Address: _____ Department of Transport

Telephone Number:

Fax Number:

14.0 Costs

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

SIGNED AT _____ on the ____ day of _____ 2002.

AS WITNESSES:

DEPARTMENT OF TRANSPORT

1. _____

(print name)

2. _____

(print name)

Document B

SIGNED AT _____ on the _____ day of _____ 200 .

AS WITNESSES: _____ (Testing station proprietor)

1. _____ By _____
_____ (print name) _____ (print name of signatory),
_____ (title of signatory)

2. _____
_____ (print name)