

COMMERCIAL DRIVER TRAINING THIRD PARTY TESTER AGREEMENT

This Agreement is made effective the _____ day of _____ between
(Effective Date Completed by DDS)

(hereinafter referred to as the "Third Party Tester")

whose address for the purpose of this Agreement is:

(Company/Tester's Address)

and the Department of Driver Services, an agency of the State of Georgia, whose address for the purpose of this Agreement is 2206 Eastview Parkway, Conyers, Georgia 30013 (hereinafter referred to as the "Department").

WHEREAS, the Department is responsible for the administration and regulation of laws relating to commercial driver training and licensing and the enforcement of laws, rules, and regulations relating to the issuance, suspension, revocation, and cancellation of commercial driver's licenses;

WHEREAS, pursuant to O.C.G.A. §40-5-27, the Department may authorize educational institutions, governmental entities and business entities to conduct CDL skills tests for Class A, Class B, and Class C on behalf of the Department and prescribe rules and regulations governing the administration of road skills tests in accordance with applicable state and federal law;

WHEREAS, the Department has authorized the CDL Third Party School System/Company to conduct CDL skills tests on its behalf and the Third-Party Examiner and the Third-Party Tester desires to do so;

NOW THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein, together with other good and adequate consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. DEFINITIONS

- a. **Approved Testing Program:** The CDL skills tests required by the Department that shall be administered by a commercial driver training school authorized as a Third-Party Tester in compliance with the guidelines established by the Department for administering of Class A, Class B and Class C CDL.
- b. **Examiner Certification Card:** A card issued to a Third-Party Tester employee designated by the school as an examiner by the Department authorizing him or her to conduct the CDL skills test required for Class A, Class B, and Class C CDLs.
- c. **Compliance Analyst:** A Department employee responsible for conducting random examinations, inspections, and audits of CDL Third Party Testers and Examiners for compliance with state and federal laws and regulations.

- d. **License:** The license or certification issued to a Third-Party Examiner or Third-Party Tester authorizing them to participate in third party testing.
- e. **Third Party Tester:** Any employer or school system/company engaged in conducting CDL testing through Third Party Examiners.
- f. **Third Party Examiner:** Any natural person, not an employee of the Department of Driver Services, who is certified by the Department of Driver Services as a Third-Party Examiner to administer Commercial Driver's License testing through a Third-Party Tester.

2. THIRD PARTY TESTER REQUIREMENTS

The parties acknowledge and understand that the Third-Party Tester must:

- a. Comply with all state, federal, and local laws, regulations, and the Department policies as well as Commercial Driver's License rules.
- b. Maintain at the approved testing location a record of each student for a minimum of three (3) years for whom the Third-Party Examiner conducts CDL skills tests, whether or not the driver passes or fails the test(s). Each driver's record must be maintained in a manner prescribed by the Department.
- c. Maintain at the approved testing location a record of the Third-Party Examiner in the employ of the Third-Party Tester who has administered skills tests at the location. Each record shall include:
 - 1. A copy of a valid Examiner Certification Card indicating that the Third-Party Examiner has met all department qualifications, and
 - 2. A copy of the Third-Party Examiner's driver records reflecting the annual driver history is required as a part of the renewal process and inspected during each audit.
- d. Ensure that all CDL skills tests administered by the CDL Third Party Examiner are conducted in accordance with the requirements of this Agreement, the instructions of the Department and its representatives, and all state and federal laws and regulations.
- e. Ensure that all CDL skills tests administered by the CDL Third Party Examiner are conducted in a manner that minimizes the potential for compromising the integrity of the test.
- f. Provide documentation on a form prescribed by the Department, of each driver who successfully completes classroom, range training and who takes and passes the required CDL skills test(s).
- g. Designate an employee responsible for the administration of the Third-Party Testing program.
- h. Maintain a DOT Safety rating of 'satisfactory', if applicable.

- i. Notify the Department within ten (10) days of any resurfacing of the skills course or remarking of the lines or markers in order for the Department to measure the skills test course for accuracy.
 1. However, the Third-Party Tester does not have to notify the Department regarding repairs and maintenance to an existing skills course.
 2. The Department shall review any modifications to the course within thirty (30) days of receipt of the Third-Party Tester's notice informing the Department of such modifications.
- ii. Have a computer with internet access to submit their schedules, rosters, score sheets and other forms as prescribed by the Department. Score sheets must be submitted on the date the tests are administered via CSTIMS.
- iii. Determining the eligibility of drivers before conducting the skills tests.
- iv. Maintain all files under lock and key. No one other than the Third-Party Examiner, Third Party Tester representative or a designated DDS employee is authorized to access these files.
- v. Allow the Department to conduct on-site inspections at least bi-annually.
- vi. Allow the Department to covertly take and monitor the tests administered by the third party.
- vii. Allow the Department to co-score along with the Third Party Examiner during CDL skills tests to compare pass/fail results.
- viii. Allow the Department to re-test a sample of drivers who were examined.
- ix. Initiate and maintain a bond, determined by the State, to pay for re-testing of drivers, in the event of fraud, by that tester or one of its examiners.
- x. Conduct a CDL skills test with at least ten (10) different applicants per year.
- xi. Maintain copies of the following records at the certified Third Party Tester location:
 1. State certificate authorizing the Third Party Tester to administer a CDL skills testing program for the classes and types of commercial vehicles listed
 2. Each Third Party Examiners State certificate with classes and types of vehicles authorized to test in
 3. Current third party agreement
 4. Each completed scoring sheet for the current year plus the past two calendar years
 5. Department approved primary and secondary road test routes
 6. Each Third Party Examiners training record

3. LICENSES AND CERTIFICATIONS

- a. Upon approval, the Department will issue a certification that authorizes the Third-Party Tester to operate an approved road skill testing program. Said certification shall grant

authorization for a period of four (4) years unless earlier terminated by the Department. This agreement will expire on _____.
(Expiration Date)

- b. The Department and the Third-Party Tester may renew this agreement upon having satisfactorily complied with all Department rules and regulations. The certification must be displayed in a conspicuous place within the Third-Party Tester's office. A separate copy of the agreement will be executed by each Third-Party Examiner of the Third-Party Tester.
- c. An examiner certification card will be issued to each Third-Party Examiner employed or hired by the Third-Party Tester upon completion of certification requirements. The Third Party Examiner's card shall be valid for no more than a period of four (4) years, is non-transferable and shall be immediately surrendered to the Department in the event that the employment or contractual relationship between the Third Party Examiner and the Third Party Tester for any reason, or if the Department cancels, suspends, and/or revokes the certification of the Third Party Tester or Third Party Examiner.

4. TEST ADMINISTRATION

CDL skills tests may only be conducted:

- a. On test routes approved in advance by the Department;
- b. In a vehicle that is registered and insured in a manner prescribed by the Department and for which the CDL Third Party Examiner is qualified to test; and
- c. Using content, forms, and scoring procedures approved in advance by the Department. Each CDL skills test score sheet will contain the tag number of the vehicle. If there is no tag number on the vehicle no test may be administered.

The Third-Party Tester acknowledges and understands that the Third-Party Examiner will do the following:

- a. All Examiners must submit, in a manner prescribed by the department, to the Compliance Analyst and to the CDL Program Manager a testing schedule for all testing to be conducted.
 - 1. This schedule must be submitted five (5) days in advance of the scheduled test.
 - 2. The term "schedule" refers to "times, dates, and places" for the purposes of this subparagraph.
 - 3. No tests may be given if not specified on the schedule.
 - 4. The Compliance Analyst must approve all scheduling exceptions.
- b. The Third-Party Examiner must contact their assigned DDS Compliance Analyst, by telephone or e-mail, immediately upon notification from the student of a test cancellation.
- c. Conduct skills tests only on behalf of Third Party Tester, in accordance with this Agreement, current directives provided by the Department, and all applicable federal and state statutes and regulations. Departmental directives may include instructions on skills

- test content, route selection, route revision, test forms, examiner procedures, administrative procedures and changes to prior requirements;
- d. Attend and successfully complete all advanced training courses, workshops, seminars, etc., that may be required by the Department;
 - e. Only administer the skills tests on behalf of approved locations utilizing the approved skills course and road test route for each approved location.
 - f. Submit on a form prescribed by the Department a request to test at additional Third Party Testers unless testing under the same umbrella.
 - 1. A Third Party Testing Agreement must be signed and approved for each location an Examiner wishes to test.
 - g. Not test relatives (by blood or marriage).
 - h. May administer skills test to both Georgia and Out-of-State applicants holding a valid Commercial Learners Permit (CLP) and underlying license.
 - i. Conduct the skills test in the following order: (1) Vehicle inspection; (2) Basic Control Skills; and (3) On the road skills driving test.
 - 1. If the driver fails to complete all three steps of the airbrake check correctly then it is considered an automatic failure and no further testing is conducted.
 - 2. If the driver fails any part of the test no further testing will be administered.
 - j. Comply with re-testing standards established by the Department.
 - k. Not conduct or allow practice sessions with the testing examiner prior to the actual test.
 - l. Maintain, under lock and key, an individual file on each applicant, which contains all information pertaining to the applicant.
 - 1. No one other than the Third-Party Examiner, designated school staff, and designated DDS employees or FMCSA representative shall be authorized to access these files.
 - 2. Verify the driver has completed all applicable parts of Entry Level Driver Training (ELDT) prior to conducting skills tests.
 - m. Schedule Class A, Class B, and Class C CDL skills tests with at least two- hour intervals not to exceed five (5) tests per day.
 - n. Conduct all CDL skills test in English only.
 - o. Be ready and willing to administer CDL skills tests on the dates and times submitted on the testing schedule, unless prior cancellation has been received from the student or testing is cancelled due to acts of nature, such as flooding, fire or natural disaster.
 - p. Third Party Examiners must comply with the following:

1. The Commercial License Permit (CLP) holder with a 'P' endorsement is prohibited from operating a commercial motor vehicle (CMV) carrying passengers, other than Federal/State auditors and inspectors, test examiners, other trainees, and the CDL holder accompanying the CLP holder. The 'P' endorsement must be class specific.
 2. The CLP holder is at all times accompanied by the holder of a valid DL who has the proper endorsement(s) necessary to operate the CMV. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder or, in the case of a passenger vehicle, directly behind or in the first row behind the driver and must have the CLP holder under observation of a direct supervisor.
 3. The applicant must take both the Passenger 'P' and School Bus 'S' endorsement knowledge tests which are required for all drivers who operate school buses; these endorsements will be placed on the permit with a 'P' restriction which prohibits passengers in the CMV bus. When the applicant has completed all training and taken and passed the CDL skills testing for issuance of the CDL license, both the 'P' and 'S' endorsements will be put on the license.
- q. It is advised that the Third-Party Examiner that conducts the examination of a CDL applicant not also be responsible for training that applicant. In cases where this occurs the Third-Party Examiner must obtain approval from the CDL Compliance Manager **prior to testing the applicant**. The Department may conduct additional monitoring events in these situations.
- r. Third Party Examiners agree to conduct the CDL skills test examinations for students/employees upon request. This requirement may be waived by the Department.
- s. Any violation of the Third-Party Agreement, FMCSA regulations, or rules may result in sanctions being imposed ranging from probation to revocation.
- t. Ensure that neither material furnished by the Department (i.e. CDL Examiner's manual, CDL skills test score sheets, etc.), any part of the CDL written test, nor the approved CDL road test route is used for instruction or training purposes. Upon a driver's successful completion of a CDL skills test, the Third-Party Examiner shall submit the scores and scoresheets to DDS via CSTIMS The Third-Party Examiner must complete a Verification of Passed CDL Skills Test Administration form (RC-CDL-VPST) to give to the applicant to present to a DDS Customer Service Center.
- u. Ensure that the CDL skills test score sheets are completed with all the required information and endorse each sheet with his or her signature. No one other than the Third-Party Examiner, designated DDS employees, or FMCSA personnel or agents shall be authorized to access these files.

The Third-Party Examiner must indicate on the CDL skills test score sheet and advise the applicant of the following restrictions:

- a. An automatic transmission restriction will be placed the CDL if the driver tests in a vehicle that was not a manual transmission – restriction code 'E.'

- b. A 'no-tractor trailer' restriction will be placed on the CDL if the driver tests in a vehicle that is connected with a pintle hook or other non-fifth wheel connection – restriction code 'O.'
- c. An 'air brake' restriction will be placed on the CDL if the driver tests in a vehicle that is not equipped with air brakes – restriction code 'L.'
- d. A 'no Class A passenger bus' restriction will be placed on the CDL if the driver tests is a Class B bus – restriction code 'M.'
- e. A 'no Class A or Class B passenger bus' restriction will be placed on the CDL if the driver tests in a Class C bus – restriction code 'N.'
- f. An 'intrastate commerce only' restriction will be placed on the CDL if the driver has to obtain a vision exemption waiver from the state in order to meet medical requirements or if the driver is under the age of 21 – restriction code 'K.'
- g. A 'no full air brake' restriction will be placed on the CDL if the driver tests in a vehicle that operates partially on the air brake and partially on the hydraulic brake principle – restriction code 'Z.'
- h. A 'P' restriction code (no passengers in CMV bus) will be placed on all permits issued with 'P' and 'S' endorsements.
- i. A 'X' restriction code (no cargo in CMV tank vehicle) will be placed on all permits issued with a tank endorsement.

5. FEES

- a. The Third-Party Tester may impose a fee, not to exceed \$100.00, for the administration of the skills test or \$150.00 if the applicant is using a vehicle provided by the Third-Party Tester. No other charge may be imposed.
- b. **The test fee may not be collected by the Third-Party Examiner** but may only be collected by another employee or agent of the Third-Party Tester who is not a third-party examiner.
- c. The Third-Party Tester must maintain records of all fees collected and provide a copy of the receipt showing that the test fee was paid to the third-party tester prior to the test being administered.
- d. The third-party examiner must place a copy of the receipt in the applicant's file.
- e. These records shall be available to the analyst upon request.

6. NOTIFICATION REQUIREMENTS

The Third-Party Tester expressly grants access to employees and representatives of the Department and FMCSA at any time in order to conduct examinations, inspections, and audits. It is expressly understood that these examinations, inspections, and audits may be conducted at random, and that no prior notice must be given.

Inspections and audits may include, but are not limited to:

- a. Examination of any records relating to the third-party testing program;
- b. Examination of all evidence of compliance, or lack thereof, with the Federal Motor Carrier Safety Regulations (FMCSR);
- c. Examination of CDL skills testing procedures, practices, and operations;
- d. Examination and inspection of vehicles used for testing;
- e. Review of the qualifications of the Third-Party Examiner;
- f. A determination of the effectiveness of the skills test program by any of the following:
 1. The administration of skills tests by Department employees to a sample of drivers who have been issued skills test(s) certificates by the Third-Party Examiner, utilizing the Third-Party Tester's approved skills course and road test route; or
 2. Administration of the skills test(s) to Department employees to audit suitability of testing. No fee may be charged for testing a DDS employee for auditing/monitoring purposes; or
 3. Additional monitoring and/or surveillance of the Third-Party Program when an Examiner's Pass/Fail rates are not in line with the Department's Pass/Fail rates.
- g. Review of any other aspect of the operation that is necessary to verify that the Third Party Tester is in compliance with the terms and conditions of this Agreement and applicable state statutes and regulations.

The Department may, but is not required to, prepare a written report of the results of each inspection and audit. If a written report is prepared, a copy will be provided to the Third-Party Tester upon request.

The Third-Party Tester must notify the Department of the following:

- a. Termination of employment or contractual relationship within ten (10) days of such action;
- b. Termination of business operations in Georgia within ten (10) days of such action;
- c. Through secure electronic means when a driver applicant passes a skills test administered by a Third Party Tester

7. INSURANCE REQUIREMENTS

- a. Each Third-Party Tester shall obtain and maintain bodily injury and property damage coverage on all motor vehicles used in the skills tests as required by state law. Such coverage shall insure the Third-Party Tester, the Third-Party Examiner, and the driver taking the skills test.
- b. The Third-Party Tester shall show evidence of such coverage during audits or other department reviews.

- c. In the event that a student utilizes his or her own vehicle to perform the skills test, the Third-Party Tester is solely responsible for determining whether or not it will verify if the student possesses appropriate insurance coverage.

8. CONDUCT

No Third-Party Examiner, employee, or agent of the Third-Party Tester may solicit the enrollment of any individual in a commercial driver training program or Third-Party Testing program on the Department's premises.

9. ADVERTISING

No Third-Party Tester shall imply in any advertisement or otherwise that a program can issue a commercial driver's license, guarantee the issuance of a commercial driver's license by the Department, or in any way influence the actions of the Department in the issuance of commercial driver's licenses or that preferential or advantageous treatment can be obtained from the Department.

10. CONFLICT OF INTEREST

The Third-Party Tester shall not engage the services of an employee of the Department as a Third-Party Examiner or agent or employee of the Third-Party Tester.

11. REVOCATION, DENIAL OR CANCELLATION OF THIRD PARTY TESTING PROGRAM AND CERTIFICATIONS

The Department and FMCSA may take prompt and appropriate remedial action against the Third-Party Tester in the event that the Third-Party Tester fails to comply with state and federal standards for the Driver Training Program or with the terms and conditions of this Agreement.

The Department may revoke a certification upon determining that:

- a. The Third-Party Tester or Examiner has made misstatements, misrepresentations, or material omissions in the application;
- b. The Third-Party Tester or Third-Party Examiner has failed to comply with any provisions of this agreement, the Department's instructions or state and federal statutes or regulations;
- c. Records or information relating to the Third-Party Testing program have been falsified;
- d. The Third-Party Tester or Third-Party Examiner has committed any act that, in the judgment of the Department, compromises the integrity of the Third-Party Tester program; or
- e. The Third-Party Examiner's driving privileges have been suspended, revoked, cancelled, or disqualified.

In lieu of revocation the Department may in its sole discretion postpone the action for a period not to exceed thirty (30) days and afford an opportunity to correct any deficiency prior to making the revocation effective.

The Department of Driver Services may, in its discretion, cancel this Third-Party Tester and Examiner agreement at any time. Upon cancellation, it is expressly agreed that neither the Third-Party Tester nor the Third-Party Examiner have a property interest in the continued operation of the Third-Party Tester Program and both are ineligible for an appeal as described in Paragraph 14 herein below.

13. SURRENDER OF CERTIFICATION

The Third-Party Tester or Third-Party Examiner shall relinquish the certification upon the Department's request and in accordance with the rules of the Department and the Third-Party Tester Program. All forms, certificates, manuals, and supplies furnished by the Department, including certification cards, shall be surrendered to the Department or its representatives within ten (10) days of relinquishing the tester or examiner certification.

14. APPEAL PROCESS

Upon revocation of a certification, the Department shall provide notice via certified mail, return receipt requested. Such notice shall be deemed received within seven (7) days after mailing. The Third-Party Tester or Examiner may request a hearing within ten (10) days of receipt of the notice. Upon timely receipt of the request, the Department shall schedule a hearing before an administrative law judge with the Office of State Administrative Hearings (OSAH). The hearing appeal process shall be in accordance with Chapter 13 of Title 50 of the Official Code of Georgia, the "Administrative Procedures Act."

If the Department does not receive the hearing request within the ten (10) day period, any rights to an appeal and hearing will be waived and the Department's action shall be effective upon the expiration of the ten (10) day period.

15. SEVERABILITY

If any term or provision in this Agreement shall be deemed illegal or unenforceable then, notwithstanding the offending terms or provisions, this Agreement shall remain in full force and effect and such terms or provisions shall be deemed stricken.

16. WAIVER

The waiver by either party of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement.

17. ENTIRE AGREEMENT

This document, and any other matters incorporated herein by reference, constitutes the sole and entire Agreement between the parties. No modifications shall be effective unless memorialized in writing, duly signed by the representatives of both parties; provided however, that this provision shall not invalidate any directives or instructions given by the Department's representatives where authorized by this Agreement.

18. GRANT-MANDATED PROVISIONS

The Parties agree to comply with Federal and State laws, rules, regulations and the State's policy relative to nondiscrimination in employment practices including hiring, promotions, demotions,

dismissal and other elements affecting employment because of race, color, sex, religion, age, physical handicap, political affiliation or national origin.

The Parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin. The Parties will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, or national origin.

No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement or any benefit that may arise therefrom; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

The Parties agree that in any agreements to be developed and awarded pursuant to this Agreement all work and procedures related to said Agreement, shall, at all times, conform to the applicable Federal and State laws, rules, regulations, orders and approvals, including specifically, procedures and requirements relating to labor standards, equal employment opportunity, nondiscrimination, compliance with Americans with Disabilities Act, anti-solicitation, information, auditing and reporting provisions.

Third Party Tester and Examiner have read and understand the requirements listed in this Agreement: _____/_____
TPT & Rep Initials

IN WITNESS THEREOF, the parties have executed this agreement.

GEORGIA DEPARTMENT OF DRIVER SERVICES

BY: _____ DATE: _____
(Signature of DDS Representative)

NAME: Kecia T. Bivins

TITLE: Assistant Deputy Commissioner, Georgia Department of Driver Services

THIRD PARTY TESTER (Representative for CDL Third Party School System/Company)

BY: _____
(Signature of Tester/Owner) (Initials of Tester Representative)

NAME: _____
(Print)

TITLE: _____
(Print)