



## THIRD-PARTY TESTER AGREEMENT

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year) by and between the VIRGINIA DEPARTMENT OF MOTOR VEHICLES ("DMV") and the THIRD-PARTY TESTER ("Tester")

\_\_\_\_\_  
(PERSON OR COMPANY NAME)

of

\_\_\_\_\_  
(PRINCIPAL OFFICE OR HEADQUARTERS ADDRESS IN VIRGINIA)

\_\_\_\_\_  
(FEDERAL EMPLOYER IDENTIFICATION NUMBER)

for the delegation of DMV's authority to administer Commercial Driver's License ("CDL") skills tests.

In consideration of their mutual duties and responsibilities to one another herein set forth, DMV and Tester agree to the following:

### I. TESTER AGREES TO:

#### A. General Compliance

1. Comply with all applicable statutes and regulations of the Commonwealth of Virginia, including, but not limited to, the Virginia Commercial Driver's License Act, Section 46.2-341.1 et seq. of the Code of Virginia, and any amendments thereto.
2. Comply with all applicable regulations of the Federal Motor Carrier Safety Administration ("FMCSA") Part 383 of Title 49 of the Code of Federal Regulations, as amended.
3. Comply with the provisions of Attachment A hereto and with the testing guidelines, instructions, and directives issued to Tester from time to time by DMV in conducting CDL skills tests as described in Section I of Attachment A.

#### B. Indemnification

Indemnify and hold harmless DMV and the Commonwealth of Virginia and its employees from and against all claims, losses, damages, costs, and other proceedings made, sustained, brought, or prosecuted in any manner based upon, occasioned by, or attributable to any injury, infringement, or damage arising from any act or omission of Tester or Tester's employees in the performance of or related to this Agreement. Nothing contained herein shall be deemed an express or implied waiver of the sovereign immunity of the Commonwealth. Tester and Tester's employees, assigns, and subcontractors shall not be deemed to be employees of DMV or the Commonwealth of Virginia because of this Agreement.

#### C. Scheduled and Unannounced Audits

Allow the representatives of FMCSA and DMV to conduct random examinations, inspections, and audits of Tester's records, facilities, and operations that relate to the third-party testing program, with or without prior notice. At least one audit of Tester's program will be conducted per year.

#### D. Test Monitoring

Allow DMV and FMCSA representatives to monitor the skills test program by observing testing in progress, taking a skills test administered by Tester's examiners ("Examiner" or "Examiners") as if the DMV/FMCSA representatives were CDL applicants, testing a sample of drivers who were examined by the Examiners, or by other monitoring methods.

#### E. Surety Bond (non-governmental Tester only)

Initiate and maintain a bond in the amount of \$5,000 to pay for retesting drivers in the event that Tester or one or more of its Examiners is involved in fraudulent activities related to conducting knowledge or skills testing for applicants. Affidavit and Acknowledgment of the bond must be filed with DMV on form TPT 556. NOTE: A governmental Tester is not required to maintain a bond.

#### F. Records

1. Maintain all records required under the Code of Virginia including, but not limited to, a copy of each Examiner's training and driving records and a copy of Tester's road test route or routes approved by DMV.
2. Consolidate all records required to be maintained by Tester at the location where an announced audit will be conducted, so that DMV and FMCSA auditors will be able to review them during the audit.
3. Make any and all records required to be maintained by Tester under the Code of Virginia available to DMV or FMCSA auditors upon request.

#### G. Information and Notification

Provide accurate, true, valid, and up-to-date information in all written or oral communications with DMV. Notify DMV of any changes in status or changes in the information Tester has supplied to DMV pursuant to the Code of Virginia.

#### H. Third-Party Examiners

1. Allow only those employees certified by DMV as third-party examiners to administer CDL skills tests and to issue skills test certificates.
2. Ensure that all Examiners are qualified and continue to be qualified and certified as third-party examiners, and that they conduct skills test, issue skills test certificates, and notify DMV of status changes, in accordance with the Code of Virginia. See Attachment A for Examiner qualification and certification requirements.
3. Ensure that all vehicles used for the third-party testing are in safe operating condition and are properly licensed and registered.
4. Ensure that no Examiner conducts both training and skills testing for any driver.

#### I. Security Test Scheduling

Notify DMV at least 48 hours prior to administering a skills test in a manner prescribed by DMV. NOTE: DMV prefers five (5) days advance notice for skills test scheduling.

#### J. Submission of Test Results

Electronically submit final road skills test results to DMV in a manner prescribed by DMV.

#### K. Skills Test Certificates

Ensure that skills test certificates are securely maintained in the applicable drivers' files, whether stored electronically or as hardcopy. Any printed copies must be on company/business letterhead and available upon request. Notify DMV immediately if any printed certificates are lost, missing, or stolen.

#### L. Non-Discrimination

Not discriminate during the performance of this Agreement against any employee or applicant for employment because of race, religion, color, sex, or national origin except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Tester. Tester agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the non-discrimination clause.

**M. Reports**

Initiate annual, periodic, or special reports in a manner and form prescribed by DMV. DMV will advise Tester of the information required to be presented in any required reports. Such reports may be required by DMV to be notarized or otherwise produced under oath and must be made available to DMV or FMCSA auditors upon request.

**II. DMV AGREES TO:****A. Test Forms and Instructions**

Provide test forms for documenting drivers' performance on the CDL skills tests, provide instructions to new Examiners as described in Section II of Attachment A on how to conduct such skills tests, provide written instructions for conducting skills tests, and provide skills test certificates for documenting successful completion of the skills tests. All materials provided to Tester or Examiners related to CDL skills tests shall remain the property of DMV.

**B. Skills Test Certificates**

Accept either skills test certificates printed on company/business letterhead that are issued by Tester in accordance with this Agreement, and with the Code of Virginia, or electronic submission of results by Tester under I J as evidence of the certificate holder's satisfaction of the skills test component of the examination required for a CDL.

**III. GENERAL TERMS****A. Applicable Laws**

The Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia.

**B. Severability**

Each provision of this Agreement is severable from the entire Agreement. If any provision is declared invalid, the remaining provisions shall remain in effect.

**C. Inventions and Copyrights**

Tester is prohibited from copyrighting any papers, interim reports, forms, or other material and/or obtaining patents on any invention resulting from Tester's performance under this Agreement. Tester agrees to apply for such copyright or patent at the written directions of DMV or the Commonwealth of Virginia, which shall pay reasonable expenses thereof. The copyright or patent shall belong exclusively to the Commonwealth of Virginia.

**IV. DURATION AND TERMINATION OF THIS AGREEMENT**

- A. This Agreement shall become effective upon signing and shall continue from month to month. Either Party may terminate this Agreement by giving 30 days' notice in writing to the other Party.
- B. In addition to the termination provisions in IV A, DMV reserves the right to terminate this Agreement in the event Tester or any Examiner fails to comply with any provision of this Agreement or with any provision of the Code of Virginia or FMCSA Regulations, falsifies any record or information relating to the third-party testing program, commits any act that compromises the integrity of the third-party testing program, or fails to pass the required nationwide criminal background check. Such termination shall be effective immediately.
- C. In the event of termination, all documents and other materials related to the CDL skills test and to this Agreement shall be returned to DMV by Tester.
- D. Should this Agreement be terminated or should Tester or any Examiner relinquish certification, such actions shall not release Tester or any Examiner from any liability that arises from their activities as Tester or Examiner.
- E. Should DMV terminate the CDL third-party testing program in its entirety, this Agreement shall automatically terminate at the time that such program is terminated. Should the CDL third-party testing program be changed in such a way as to necessitate a change in this Agreement, DMV may, in its sole discretion, make such change and notify Tester in writing. Tester may agree to such change by executing a modified agreement, or may terminate this Agreement by giving DMV 30 days' notice in writing. At the expiration of such notice, this Agreement shall terminate.

**V. COMMUNICATIONS/CONTACT**

Notices and communications required or desired to be given in writing pursuant to this Agreement shall be mailed to the following addresses:

For DMV:

Commercial Driver's License Program Manager  
Virginia Department of Motor Vehicles  
P. O. Box 27412  
Richmond, VA 23269-0001

For Tester:

CONTACT NAME
BUSINESS NAME
LOCATION ADDRESS
CITY, STATE, ZIP, CODE

**VI. ENTIRE AGREEMENT**

This Agreement and Attachment A constitute the sole and entire agreement between DMV and Tester relating to the authority to administer the CDL skills tests. No other terms or conditions shall form a part hereof, and this Agreement shall not be modified except by subsequent agreement in writing and attached as an addendum, duly signed by the authorized representatives of both Parties, provided that where modifications are made necessary because of changes in statutory or regulatory provisions, failure of Tester to agree to such modifications shall be grounds to terminate this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first written above.

**THIRD-PARTY TESTER**

THIRD PARTY TESTER COMPANY NAME	
THIRD-PARTY TESTER AUTHORIZED REPRESENTATIVE NAME (print)	TITLE
THIRD-PARTY TESTER AUTHORIZED REPRESENTATIVE SIGNATURE	DATE (mm/dd/yyyy)

**DMV**

DMV OFFICIAL NAME (print)	TITLE
DMV OFFICIAL SIGNATURE	DATE (mm/dd/yyyy)

# THIRD-PARTY TESTER AGREEMENT

## COMMERCIAL DRIVER'S LICENSE SKILLS TESTING AND TESTER AND EXAMINER QUALIFICATIONS

### I. Description of Tests to be Administered by Third-Party Testers

- A. The Commercial Driver's License ("CDL") skills test is composed of two parts: a pre-trip inspection test and a skills test. Both tests have score sheets and objective scoring criteria..
- B. DMV will supply the pre-trip inspection test materials for third-party testers. These test materials will include instructions for conducting the inspection and will list all of the vehicle components that must be identified by the CDL applicant. The pre-trip inspection will require the CDL applicant to inspect thoroughly the engine compartment, the suspension system, the braking system, the front and rear sections of the commercial motor vehicle, and will require the applicant to start the vehicle's engine properly.
- C. DMV will supply the road test materials for third-party testers. These test materials will include instructions for designing the skills test route and conducting the skills test. The skills test route must include the following maneuvers:
  - 4 left turns
  - 4 right turns
  - 1 lane change to left
  - 1 lane change to right
  - 1 bridge or underpass
  - 2 pass through an intersection
  - 2 stops at an intersection
  - 1 railroad cross (when possible - if not possible, simulate)
  - 1 straight section of urban business street
  - 1 curve to the left
  - 1 curve to the right
  - Section of expressway or highway
  - Roadside stop/start
  - Student discharge (if required)
  - Weight restriction or traffic sign or low clearance (must include 2 of the 3 maneuvers)

### II. Certification of Third-Party Testers

- A. To qualify for and maintain certification a third-party tester must:
  - Enter into the Third-Party Tester Agreement with DMV and comply with all provisions of that Agreement, including, but not limited to, all state and federal laws referenced;
  - Maintain a place of business in Virginia; and
  - Employ at least 1 certified third-party examiner.
- B. A third-party tester that is not a governmental entity must also:
  - Be engaged in a business in Virginia involving the use of commercial motor vehicles. Such business must have been in operation for at least 1 year;
  - Employ at least 75 Virginia-licensed drivers of commercial motor vehicles for at least 1 year prior to application, except that DMV may waive this requirement if certain conditions are met;
  - Initiate and maintain a bond in the amount of \$5,000.00;
  - Maintain a rating of "satisfactory," if subject to Federal Motor Carrier Safety Administration ("FMCSA") Regulations and rated by the United States Department of Transportation; and
  - Comply with the Virginia Motor Carrier Safety Regulations.

### III. Termination of Certification of Third-Party Testers

DMV will revoke the certification to administer CDL skills tests for any third-party tester who:

- A. Fails to comply with the provisions of the Third-Party Tester Agreement, or any provision of the Code of Virginia or FMCSA Regulations;
- B. Falsifies any record or information relating to the third-party testing program; or
- C. Commits any act that compromises the integrity of the third-party testing program.

**IV. Certification of Third-Party Examiners**

- A. Qualification and training requirements for the certification of Examiners are set out in 49 CFR § 384.228 and Virginia Code § 46.2-341.14.2.
- B. Third-party examiners may be certified to conduct CDL skills tests on behalf of only one third-party tester at any given time. To qualify for and maintain certification as a third-party examiner, an individual must:
  - Pass a required nationwide criminal background check;
  - Be an employee of a third-party tester;
  - Possess a valid CDL with the classifications and endorsements required for the operation of the class and type of vehicle to be used in the CDL skills tests to be conducted;
  - Satisfactorily complete DMV third-party examiner training;
  - Have had no driver's license suspensions, revocations, or disqualifications within 3 years prior to application for certification;
  - At the time of application, have no more than 6 demerit points and not be on probation with DMV;
  - Within 3 years of application, have had no conviction for which the examiner would have been disqualified to operate a commercial motor vehicle by DMV, whether or not such conviction occurred in a commercial motor vehicle;
  - If employed by a school board, be certified by the Virginia Department of Education as a school bus training instructor;
  - Conduct CDL skills tests in accordance with state law and instructions provided by DMV; and
  - Successfully complete a refresher training course and examination every 4 years.
- C. Third-party examiners must be recertified in order to conduct CDL skills tests on behalf of a new third-party tester.

**V. Description of DMV Training for New Third-Party Examiners**

- A. Each Examiner is required to successfully complete a formal CDL test examiner training course and examination as a condition of certification by DMV. Examiners will have three attempts in which to pass the examination. DMV will deny certification of an Examiner who fails to pass the examination within 30 days from the first test date. The Examiner may re-apply for certification 6 months from the date of denial.
- B. Certified Examiners must complete a refresher training course and examination every 4 years to maintain certification. Examiners will have three attempts in which to pass the examination. DMV will revoke the skills testing certification of an Examiner who fails to pass the examination within 30 days from the first test date.
- C. Any Examiner who fails to complete the required refresher training every four years, or who does not conduct at least 10 different examinations per calendar year, may take a refresher commercial driver's license training course or have a DMV Examiner ride along to observe Examiner successfully administer at least one skills test in order to maintain certification.
- D. DMV will provide the training that will be required of all third-party examiners. The training will include:
  - An overview of the CDL laws and an explanation of commercial motor vehicle classes and endorsements;
  - An explanation of disqualification offenses and procedures applicable to commercial motor vehicle drivers;
  - An explanation of the CDL licensing process at DMV;
  - Instructions for administering and criteria for scoring the skills test; and
  - An explanation of DMV's audit process for third-party testers.
- E. The training course may last two or three days and may be conducted at various sites across the Commonwealth, including third-party test sites where training rooms and access to commercial motor vehicles to be used for testing are provided.

**VI. Termination of Certification of Third-Party Examiners**

In addition to the grounds for termination under Sections III and V, above, DMV will revoke the certification to administer CDL skills tests for any third-party examiner who:

- A. Does not successfully pass the required nationwide criminal background check. Criteria for not passing the criminal background check include, but are not limited to, having a felony conviction within the past 10 years or any conviction involving fraudulent activities;
- B. Does not successfully complete the required refresher training every four years pursuant to 49 C.F.R. § 384.228; or
- C. Does not conduct CDL skills tests of at least 10 different applicants per calendar year, except that examiners who do not meet this requirement will be given the option to take a refresher training course or have a DMV employee ride along to observe the third-party examiner successfully administer at least one skills test in order to avoid revocation.