

THIRD-PARTY COMMERCIAL DRIVER'S LICENSE SKILLS TESTING AGREEMENT

This commercial driver's license skills testing agreement is between the Commonwealth of Pennsylvania, acting through the Department of Transportation,

and

The Commercial Motor Vehicle Safety Act requires the Secretary of the United States Department of Transportation to issue regulations establishing minimum federal standards for skills testing and ensuring the fitness of persons who operate commercial motor vehicles.

The Commercial Motor Vehicle Safety Act permits states to administer driving skills tests approved by the Secretary or to enter into an agreement with a third party to administer the tests. A third party may administer the tests if the third party administers the same tests as those that would otherwise be given by PennDOT and meets minimum standards established by federal regulation.

PennDOT has adopted regulations, specifically set forth in 67 Pa. Code, Ch. 75 (relating to driver's license examination), for complying with the Commercial Motor Vehicle Safety Act by setting forth minimum testing standards to apply to Class A, B, and C drivers.

PennDOT has chosen the Provider to serve as one of the authorized third-party commercial driver's license skills test administrators in accordance with this

agreement and the Program Requirements, as defined below.

The parties, intending to be legally bound, agree to the following:

1. **Definitions.** The following definitions apply when used in this agreement:

“Commercial Motor Vehicle Safety Act” means the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99-570, 100 Stat. 3207.).

“Jurisdictional Policies” means those Commonwealth policies applicable to the Provider as listed in Exhibit C.

“PennDOT” means the Pennsylvania Department of Transportation.

“Program Requirements” means the Third-Party Commercial Driver’s License Skills Testing Program Requirements, attached as Exhibit A.

“Provider” means

“Provider Application” means the completed application submitted by the Provider and accepted by PennDOT.

“Sanctions Matrix” means the CDL Third-Party Sanctions Matrix for Third Party Examiners, attached as Exhibit B.

“Secretary” means the Secretary of the United States Department of Transportation.

“USDOT” means the United States Department of Transportation.

2. **Services.** The Provider shall provide skills test administration services for commercial driver's license applicants in accordance with this agreement, including the Program Requirements and the Provider Application. As used in the Program Requirements, attached as Exhibit A, the term "Third-Party Tester" means the Provider.

3. **Provider Responsibilities.**

(a) The Provider shall comply with the Program Requirements, which may be amended by PennDOT at any time. The Provider's authority to provide skills test administration services for commercial driver's license applicants is conditioned upon its strict compliance with the Program Requirements.

(b) PennDOT may revise the Program Requirements for any reason. PennDOT may deliver notice of the revisions electronically to the e-mail address set forth in this agreement or such other address provided to PennDOT, in writing. PennDOT's notice will be effective upon issuance, and the Provider shall be deemed to have accepted the revisions. The Provider shall comply with such revisions unless the Provider exercises its option to terminate the agreement by giving PennDOT 30 days' notice.

4. **Sanctions.** PennDOT may impose sanctions for the Provider's failure to comply with the terms of this agreement. The sanctions PennDOT may apply for prohibited acts and omissions are set forth in the Sanctions Matrix.

5. **Remedies to the Provider.** The Provider's remedies for suspension, revocation, or termination are limited to an appeal under 2 Pa. C.S. §§ 501 – 508 (relating to general rules of administrative practice and procedure of administrative agencies); 1 Pa. Code Part II (relating to general rules of administrative practice and procedure); and 67 Pa. Code Chapter

491 (relating to administrative practice and procedure). The Provider shall initiate an appeal by filing a written request for a hearing within 30 days of the date of a notice provided by PennDOT. PennDOT may immediately suspend Provider's operations under this agreement on an interim basis prior to a hearing, where it determines that Provider's conduct presents an immediate and substantial threat of serious harm to the public or PennDOT's interests. Any such interim suspension is subject to review as provided in 67 Pa. Code Chapter 491 (relating to administrative practice and procedure).

6. **Sanctions Matrix.** If the Provider engages in any of the acts or omissions listed in the Sanctions Matrix, alone, or in combination with similar acts or omissions of the same nature as prior acts and omissions, PennDOT may suspend, temporarily decertify, or permanently decertify the Provider in accordance with the Sanctions Matrix attached as Exhibit B.
7. **Multiple Acts or Omissions.** In the event the Provider commits multiple prohibited acts or omissions arising out of the same facts and circumstances, PennDOT may impose separate sanctions for each prohibited act or omission under the Sanctions Matrix. PennDOT may also direct that sanctions be served concurrently or consecutively, and PennDOT may impose sanctions of lesser duration than as listed in the Sanctions Matrix. PennDOT may impose a sanction or suspension in excess of those listed in the Sanctions Matrix for the Provider's acts or omissions of the same nature as prior acts and omissions.
8. **Continued Suspension.** Notwithstanding any sanction as described in the Sanctions Matrix, if the Provider has not remedied the act or omission resulting in a suspension or temporary decertification at the end of a suspension or decertification period, the suspension or decertification will continue beyond the suspension or decertification period stated in the Sanctions Matrix, or in PennDOT's notice until the act or omission is fully remedied to PennDOT's satisfaction.
9. **Pennsylvania Jurisdictional Policies.** The Provider shall comply with the Pennsylvania

Jurisdictional Policies attached as Exhibit C. If the Provider fails to comply with one or more of the Commonwealth Jurisdictional policies PennDOT shall impose the applicable sanction in accordance with the Sanctions Matrix.

10. **Visits to Sites.** PennDOT, or its designee, and USDOT may make visits to any Provider site during regular business hours with or without prior notice to the Provider.
11. **Audit Requirement.** PennDOT, or an authorized designee selected by PennDOT, and USDOT may make periodic audits relating to this agreement. The degree and conduct of any such audit, and the frequency of such audits, will be at the sole discretion of PennDOT and USDOT and will focus on the Provider's compliance with the terms of this agreement. The Provider shall cooperate fully with PennDOT's auditor and USDOT's auditors.
12. **Records Requirement.** The Provider shall maintain all books, documents, papers, records, accounting records, employee's timecards, and other records or evidence pertaining to the agreement and shall make such materials available to PennDOT and USDOT at all reasonable times during the term of the agreement and for three years after the end of the agreement term or such earlier termination of the agreement.
13. **No Payment to Provider.** PennDOT may not make any payment to the Provider. The Provider shall bill the public users of its services.
14. **Limited Access.** Access to all PennDOT systems is limited to only that information necessary for the purposes outlined or activities authorized under this agreement.
15. **Use of Information.** The Provider or any of its agents, may not sell, assign, or otherwise transfer any information or portions of information obtained pursuant to this agreement to any other party. The Provider may not use any record information so obtained pursuant to this agreement for any purpose other than those as specifically authorized by this agreement. The

Provider shall comply with section 6114 of the Vehicle Code, 75 Pa. C.S. § 6114 (relating to limitation on sale, publication and disclosure of records); Title 67, Pennsylvania Code, Chapter 95 (relating to sale, publication or disclosure of driver, vehicle and accident records and information); the Federal Driver's Privacy Protection Act, 18 U.S.C. §§2721 et seq.; the Breach of Personal Information Notification Act, 73 P.S. §§ 2301 - 2329; and the Federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* Consistent with the provisions of this agreement and the Program Requirements, the Provider shall be the sole user of record information supplied by PennDOT. Record information supplied by PennDOT may not be used to create or update a file to be used by the Provider, or to develop their own source or record information. Record information shall not be retained, stored, combined, or linked in with any other data on any database by the Provider, for any reason.

16. **No Direct Mailing or Advertisements.** Under no circumstances may the Provider use, disclose, publish, or permit others to use any information provided by PennDOT for direct mail advertising or any other type or types of mail or mailings or electronic dissemination, except as specifically contemplated by this agreement and as required to process Transactions. The Provider shall not disclose or publish any information appearing in any record.

17. **Publication Prohibited.** The Provider shall not disseminate or publish the record information obtained from PennDOT or allow any other person to disseminate or publish any driver record information without the prior written approval of PennDOT.

18. **Ownership of Records.** PennDOT retains exclusive ownership of record information provided to the Provider, and created by the Provider on behalf of PennDOT, under this agreement.

19. **Required Security.** The Provider shall maintain the highest degree of security over information furnished by PennDOT and take all necessary steps to prevent the disclosure or

use of such information in any form or manner not expressly permitted by this agreement. Security arrangements are subject to inspection or audit by PennDOT.

20. **Surrender of Productions and Destruction of Record Information.** Upon termination of this agreement or at any time requested by PennDOT, the Provider shall immediately surrender all Department products and certify in writing the destruction of all PennDOT information in the Provider's possession. This provision survives termination of this agreement and will continue until such time as the Provider has fully complied.

21. **Compliance with all Laws and Local Ordinances.** The Provider shall comply with all applicable federal and state laws and local ordinances in carrying out this agreement, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241.), and all other Federal and State laws, executive orders and implementing regulations relating to nondiscrimination.

22. **Environmental Laws.** In carrying out this agreement, the Provider shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

23. **Required Commonwealth Provisions.** The Provider shall comply with the Commonwealth Standard Terms and Conditions, attached as Exhibit D. As used in these provisions, the term "Contractor" means the Provider.

24. **Term of Agreement.** The term of this agreement will commence on the date of the last Commonwealth signature and remain in effect until terminated in accordance with section 25.

25. **Termination.**

(a) **Termination for Cause.** PennDOT may immediately terminate this agreement for Provider nonperformance or inadequate performance. PennDOT shall provide 30

calendar days' written notice before termination, and this agreement will not terminate if Provider cures the breach within that 30-day period, to PennDOT's satisfaction. The 30-day period will commence on the date the notice is mailed or delivered in accordance with this agreement.

(b) **Termination for Convenience.** Either party may terminate this agreement for any cause by providing 30 calendar days' notice of such termination in writing to the other party.

(c) **Accrued Rights and Obligations.** Termination of this agreement for any reason will not release either party from any liability that, at the time of such termination, has already accrued to the other party or that is attributable to a period prior to such termination, nor preclude either party from pursuing any rights and remedies it may have with respect to any breach of this agreement. If this agreement is terminated, regardless of reason, the Provider shall ensure that all Department products are returned to PennDOT immediately and shall allow PennDOT access to all Provider sites for the purpose of removing any Department products. Upon termination, the Provider shall provide PennDOT with any data in its possession relating to commercial driver's license skills test administration.

26. **Amendments.** No alterations or variations to this agreement will be valid unless made in writing and signed by the parties. Except as set forth in sections 3, 25, and 33, amendments to this agreement must be accomplished through a formal written document signed by the parties with the same formality as the original agreement.

27. **Severability.** The provisions of this agreement are severable. If any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth and its applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and its applicability to any government, agency, person, or circumstance will

not be affected.

28. **No Waiver.** Either party may elect not to enforce its rights and remedies under this agreement in the event of a breach by the other party of any term or condition of this agreement. In any event, the failure by either party to enforce its rights and remedies under this agreement may not be construed as a waiver of any subsequent breach of the same or any other term or condition of this agreement. No waiver will be effective unless granted in writing, signed by an authorized signatory of the granting party.

29. **Conflict Between Provisions.** In the event of conflict between the provisions of this agreement and the Program Requirements, the agreement will prevail and if there is a conflict between the provisions of this agreement and any other attachment to this agreement, the provisions of this agreement will prevail.

30. **Independence of the Parties.** Nothing contained in this agreement is intended or may be construed to, in any respect, create or establish the relationship of partners between the Provider and PennDOT, or as constituting PennDOT as the representative or general agent of the Provider.

31. **Assignment.** This agreement may not be assigned, either in whole or in part, without PennDOT's written consent.

32. **No Third-Party Beneficiaries.** This agreement does not create or confer any rights in or on persons or entities not a party to this agreement.

33. **Notices.** All notices and reports required under this agreement must be in writing and given to the parties at the address provided under this agreement, either by regular mail, e-mail, or delivery in person:

If to PennDOT:
[INSERT NAME AND TITLE]

[INSERT BUREAU OR ENGINEERING DISTRICT]
[INSERT STREET ADDRESS OR P.O. BOX]
[INSERT CITY, STATE AND ZIP CODE]
[INSERT TELEPHONE NUMBER]
[INSERT EMAIL ADDRESS]

If to the Provider:

[INSERT NAME AND TITLE]
[INSERT MUNICIPALITY OR OTHER ENTITY]
[INSERT STREET ADDRESS OR P.O. BOX]
[INSERT CITY, STATE AND ZIP CODE]
[INSERT TELEPHONE NUMBER]
[INSERT EMAIL ADDRESS]

Either party may update this contact information without the need for formal amendment by providing the other party notice.

34. **Force Majeure.** Neither party will be liable for failure to perform under this agreement if a failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision will become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision will not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

35. **Integration and Merger.** The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. As such, it is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing. In entering this agreement, the parties did not rely upon oral or written statements or

representations not contained within the document itself.

36. **Counterparts.** The parties may execute this agreement in counterparts, each of which is deemed an original and has the full force and effect as an original but all of which constitute one and the same instrument.

37. **Electronic Signatures.** The parties may sign this agreement electronically in accordance with the Electronic Transactions Act, 73 P.S. § 2260.301, et seq.

[The remainder of this page is intentionally left blank.]

SAMPLE

The parties, through their authorized representatives, have signed this agreement below.

PROVIDER

BY _____
Title: _____ DATE _____

If a corporation, only the Chairman, President, Vice President, Senior Vice President, Executive Vice President, Assistant Vice President, Chief Executive Officer or Chief Operating Officer must sign; if one of these officers is not available, please attach a resolution. If a sole proprietorship, only the owner must sign; if a partnership, only one partner needs to sign; if a limited partnership, only a general partner may sign. If a Limited Liability Company ("LLC"), only one member needs to sign, unless it is a manager-based LLC, then a manager must sign. If a Municipality, Authority, or other entity, please attach a resolution.

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary or Designee Date _____

APPROVED AS TO LEGALITY
AND FORM

BY _____
Office of Chief Counsel Date _____

BY _____
Office of General Counsel Date _____

BY _____
Office of Attorney General Date _____