

**THIRD-PARTY NON-COMMERCIAL DRIVER'S LICENSE SKILLS TESTING
AGREEMENT**

This Non-Commercial Driver's License Skills Testing Agreement is between the Commonwealth of Pennsylvania, acting through the Department of Transportation ("PennDOT"),

and

XXXXX ("Provider").

In October 2014, the General Assembly of the Commonwealth of Pennsylvania passed Act 170, an amendment to section 1508 the Vehicle Code (75 Pa.C.S. § 1508), allowing PennDOT to authorize a third party to administer the portion of the examination demonstrating the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type or class of vehicles for which the applicant desires a license to drive.

PennDOT has chosen the Provider to serve as one of the authorized third-party non-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. **Services.** The Provider shall provide skills test administration services for non-commercial driver's license applicants in accordance with this agreement, including the Third-Party Non-Commercial Driver's License Skills

Testing Program Requirements (“Program Requirements”), attached as Exhibit A, and the completed application submitted by the Provider, attached as Exhibit B. As used in the Program Requirements, the term “Third-Party Tester” means the Provider.

2. 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 non-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.

3. 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).

4. **Visits to Sites.** PennDOT or its designee shall have the right to make visits to any Provider site during regular business hours with or without prior notice to the Provider.
5. **Audit Requirement.** PennDOT, or an authorized designee selected by PennDOT, 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 will focus on the Provider's compliance with the terms of this agreement. The Provider shall cooperate fully with PennDOT's auditors.
6. **Records Requirement.** The Provider shall maintain all books, documents, papers, records, accounting records, employee's time cards, and other records or evidence pertaining to the agreement and shall make such materials available to PennDOT 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.
7. **No Payment to Provider.** PennDOT may not make any payment to the Provider. The Provider shall bill the public users of its services.
8. **Limited Access.** Access to all PennDOT systems is limited to only that information necessary for the purposes outlined or activities authorized under this agreement.
9. **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.

10. **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.
11. **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.
12. **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.
13. **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.

14. **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 Department 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.
15. **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.
16. **Environmental Laws.** In carrying out this agreement, the Provider shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.
17. **Required Commonwealth Provisions.** The Provider shall comply with the Commonwealth Standard Terms and Conditions, which are attached as Exhibit C. As used in these provisions, the term "Contractor" means the Provider.
18. **Term of Agreement.** The term of this agreement will commence on the Effective Date (as defined below) and remain in effect until terminated in accordance with Section 19 below. The Effective Date will be the date that this agreement is fully executed by the parties and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature.
19. **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 non-commercial driver's license skills test administration.

20. **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 2, 19, 22, and 27, amendments to this agreement must be accomplished through a formal written document signed by the parties with the same formality as the original agreement.

21. **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.

22. **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.
23. **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.
24. **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.
25. **Assignment.** This agreement may not be assigned, either in whole or in part, without PennDOT's written consent.
26. **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.
27. **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:

Contract Management Unit
PennDOT Driver and Vehicle Services
1101 S. Front Street, 4th Floor
Harrisburg, PA 17104
(717) 705-2416
ra-pdcontracts3partynoncdl@pa.gov

If to the Provider:

LEGAL COMPANY NAME
ADDRESS LINE 1
Click or tap here to enter text.
Click or tap here to enter text.
COMPANY PHONE
EMAIL

or to such other person or address as the parties may provide to each other in writing.

28. **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.

29. **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.

30. **Counterparts.** This agreement may be executed 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.

31. **Electronic Signatures.** This agreement may be electronically signed in accordance with the Electronic Transactions Act, 73 P.S. § 2260.301, et seq.

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

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

ATTEST:

PROVIDER

BY _____
Signature DATE

BY _____
Signature DATE

Title

Title

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

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