

# Texas Commercial Driver License Third-Party Skills Testing Provider Agreement

## Section 1. Parties

This Agreement is made between the Department of Public Safety of the State of Texas (DPS) and the Commercial Driver License (CDL) Authorized Organization (AO). This agreement authorizes the named AO to administer Commercial Driver License skills tests on behalf of the State of Texas. This agreement permits the AO to administer commercial driver license skills tests as specified in this agreement.

## Section 2. Purpose

The purpose of this agreement is to explain the requirements for conducting Commercial Driver License skills tests as a third-party tester. Authority to administer skills tests is granted only to third-party testers who use third-party Examiners certified by the Department.

## Section 3. Definitions

- 3.1 Authorized Organization (AO). An entity that has entered into a Memorandum of Understanding with the Department to administer the driving skills test for a commercial driver license on the Department's behalf. This is equivalent to a third-party tester in accordance with 49 Code of Federal Regulations (CFR) § 383.5.
- 3.2 AO Employee. A person hired by an AO and whose employment has been verified by the Department with the human resources officer of the AO.
- 3.3 Activity Report. The required monthly report required by the 10th day of each month. The Department will provide a template to each AO to use when submitting its information. The report must include the following information:
  - a. Examiner's Name;
  - b. Examiner's Number;
  - c. Examiner's CDL Class;
  - d. Number of Tests Passed; and
  - e. Number of Tests Failed.
- 3.4 Applicant. An individual who intends to apply for a Commercial Driver License (Class A, B, or C) and is required to pass the applicable CDL skills test.
- 3.5 BTW. Behind the Wheel
- 3.6 CDL. Commercial Driver License
- 3.7 Certification. An official document issued by the Department of Public Safety to an AO and AO Employees authorizing the capability of completing CDL Skills Testing.

- 3.8 Commercial Motor Vehicle (CMV). A motor vehicle or combination of motor vehicles used to transport passengers or property that: (a) Has a gross combination weight rating of 26,001 lbs. or more, including a towed unit with a gross vehicle weight rating of more than 10,000 pounds; (b) Has a gross vehicle weight rating of 26,001 lbs. or more; (c) Is designed to transport 16 or more passengers, including the driver; or (d) is transporting hazardous materials and is required to be placarded under 49 CFR Part 172, Subpart F.
- 3.9 Confidential Information. Information that is proprietary, privileged, confidential, covert law enforcement, or in any other way non-public information.
- 3.10 Department or DPS. The Department of Public Safety of the State of Texas.
- 3.11 Designated Responsible Person. Person selected by an AO to supervise Examiners and is responsible for all records and submission of reports.
- 3.12 Domicile. The place where a person has the person's true, fixed and permanent home or principal residence and to which the person intends to return whenever absent.
- 3.13 DOT Physical. A physical that meets definition of 49 CFR §§ 391.41 and 391.43.
- 3.14 Examiner. An individual certified by the Department to conduct a skills test. This is equivalent to the third party skills test examiner in accordance with 49 CFR 383.5.
- 3.15 FMCSA. Federal Motor Carrier Safety Administration.
- 3.16 FMCSR. Federal Motor Carrier Safety Regulation.
- 3.17 Governmental Entity. A Governmental Entity, for purposes of this Agreement, is a local government or political subdivision. It includes an independent school district, a regional education service center, university, or junior college.
- 3.18 Gross Combination Vehicle Weight Rating (GCWR). Defined by 49 CFR § 383.5.
- 3.19 Gross Vehicle Weight Rating (GVWR). Defined by 49 CFR § 383.5.
- 3.20 Instant Random Sampling. Where a select single Applicant or group of Applicants:
- i. is/are currently at the AO location;
  - ii. has/have completed a skills test within the current business day;
  - iii. is/are selected entirely by chance; and
  - iv. has/have an equal opportunity of being selected for re-examination.
- 3.21 MVR. Official Motor Vehicle Record obtained from the Department.
- 3.22 Out-of-State. A person or AO whose Domicile is not in Texas.

- 3.23 Random Sampling. Where a select single Applicant or group of Applicants:
- i. has/have completed the skills test;
  - ii. is/are chosen entirely by chance; and
  - iii. has/have an equal chance of being selected for re-examination.
- 3.24 Skills Testing Pad. A 35' x 240' concrete or reinforced asphalt pad located in a safe location, clearly painted or marked with safety cones, free of debris, other vehicles, and segregated from the general public or traffic when used for skills testing.
- 3.25 SPE. Skills Performance Evaluation.
- 3.26 State. The State of Texas.
- 3.27 Substandard Test. Any part or parts of the Commercial Driver License Skills Test not administered in accordance with standards, guidelines, or policies established by the Federal Motor Carrier Safety Regulation, the Department, Texas Transportation Code § 522.023, and 37 Texas Administrative Code § 16.31.

## **Section 4. General Provisions**

- 4.1 The Department reserves the right to change the program rules, regulations, or policies or even cancel this program in its entirety at any time without prior notice. Notification of changes will be sent to the AO's Designated Responsible Person.
- 4.2 The failure to adhere to applicable Department and FMCSA rules, regulations, or policies specific to CDL requirements can result in the AO (1) being removed from the third-party testing program, (2) being suspended from CDL skills testing privileges, or (3) being required to ensure an Applicant administered a CDL skills test by the AO is retested at a driver license office.
- 4.3 Companies operating under this Agreement are prohibited from hiring any Department driver license division Employees as an agent, Examiner, or AO Employee for 365 days from the Employee's date of separation from the Department, unless the Employee has officially retired from State service, or the Department has granted a waiver.
- 4.4 Certification may not be assigned. No individual or entity may sell, assign, barter, or trade an AO or Examiner certification issued by the Department.

## **Section 5. Qualifications and Requirements**

In order to receive and maintain Certification and become an authorized organization to administer CDL skills testing, an organization must meet the following conditions.

### **5.1 AO Application for All Entities**

- 5.1.1 Make application to, and if approved, enter into this agreement with the Department.
- 5.1.2 Maintain at least one permanent, regularly occupied structure in Texas with a permanent Texas physical address.
- 5.1.3 Own or lease, in the name of the driver training school or school owner, at least one Class A or B (Group) CMV that requires a CDL and is specific to the type of skills test being administered. Regional Education Service Centers that do not own or lease at least one Class A or B (Group) CMV and that are serving as a AO for a School District must present to the Department an agreement between the Regional Education Service Center and the School District certifying that the School District owns or leases at least one Class A or B (Group) CMV and the Regional Education Service Center has authorization to use the vehicle(s) for skills testing.
- 5.1.4 Vehicles used for skills testing must have a current registration and safety inspection.
- 5.1.5 Conduct at least ten complete CDL skills tests per calendar year, with the calendar year beginning every January 1. A complete CDL skills test includes the pre-trip, basic skills control, and road trip.
- 5.1.6 AO must have been in continual operation for 365 days immediately preceding the date of application to become an AO.
- 5.1.7 An existing AO business may be purchased for continued operation by a new organization; however, the new owner or lessor is required to apply as an original AO Applicant. Any existing or previous violation(s) cited by the Department at the physical location will be transferred to the new owner or lessor.
- 5.1.8 Must ensure an Examiner's Certification is submitted for each person in their employment who will be conducting skills tests.
- 5.1.9 Employ at least one Examiner who has been certified after meeting the qualification requirements of the Department.
- 5.1.10 Conduct State and federal nationwide criminal background checks at the AO's cost for each of its Examiners and require additional checks as needed for cause.
- 5.1.11 Conduct all portions of the CDL skills test in Texas.
- 5.1.12 Maintain a basic control skills course in Texas and road test route that meets the requirements outlined in the CDL Skills Testing Manual. Skills Testing Pads must be approved by the Department. An AO can share another AO's Skills Testing Pad as long as there is a formal written agreement between the two companies that can be provided to the Department at the time of the inspection. This formal written agreement must clearly indicate a schedule of when the Skills Testing Pad will be used by each AO. The Department must approve basic control skills course(s) and CDL road test route(s) before a CDL skills test can be administered by an AO. The Department must approve any changes or modifications, before a test is administered using the change or modification. Road test routes must be approved by the Department and a copy of the route(s) must be on file at each testing location.

- 5.1.13 Examiners and the Designated Responsible Person (DRP) are required to attend periodic training sessions when notified by the Department.
- 5.1.14 The skills test being administered by the AO must be the same as that administered by the Department.
- 5.1.15 Maintain a valid and operational telephone number for contact by the Department as needed.
- 5.1.16 Maintain the hours of operation on file with the Department.
- 5.1.17 Maintain a surety bond in the amount of \$25,000 for each Examiner employed and provide evidence of meeting this requirement to the Department. The company issuing the surety bond must be authorized to conduct business in Texas.
- 5.1.18 Maintain at least the minimum amount of insurance coverage required under Texas Transportation Code § 601.072 and provide evidence of meeting this requirement to the Department. The insurance company must be authorized to conduct business in Texas.
- 5.1.19 Through advertising or by any other method, the AO may not indicate that the AO can issue a CDL, imply that the AO can influence the Department in the issuance of a CDL, or imply that the AO can obtain preferential treatment from the Department.
- 5.1.20 An AO may not use any Department or state seal or insignia or an insignia or design that is deceptively similar to such a seal in any advertising or promotional materials.
- 5.1.21 An AO that is certified by the Department may, in their advertising, state that they are “certified,” but will not indicate that the AO is approved, sanctioned, or in any way endorsed by the Department and will not use any other name besides the name on its application for certification, nor will the AO use “state” in any part of its name.
- 5.1.22 AO must defend, indemnify, and hold harmless the State of Texas and the Department, and their officers, agents, employees, representatives, contractors, assignees, or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of AO or its agents, employees, or subcontractors in the execution or performance of this Agreement. The defense must be coordinated by AO with the office of the Texas Attorney General (OAG) when Texas state agencies are named defendants in any lawsuit and AO may not agree to any settlement without first obtaining the concurrence from OAG. AOs and the Department agree to furnish timely written notice to each other of any such claim.

## **5.2 Additional Information for Governmental Entities Applying to Become an AO**

- 5.2.1 The insurance and indemnification clauses in Section 5.1 do not apply to a Governmental Entity.
- 5.2.2 An Independent School District (ISD) not certified to administer CDL skills

testing is permitted to enter into an agreement with another ISD that has been authorized by the Department to administer CDL skills testing for the purposes of administering the CDL skills tests to Employees of the non-certified school district.

- 5.2.3 The 20 Regional Education Service Centers may enter into an agreement with the Department to administer the CDL skills test to Independent School District Employees in their service area.
- 5.2.4 An ISD that is not certified to administer CDL skills testing is permitted to enter into an agreement with a Regional Education Service Center that has been authorized by the Department to administer CDL skills testing for the purposes of administering skills tests to Employees of the non-certified ISD.
- 5.2.5 A Governmental Entity not certified to administer CDL skills testing is permitted to enter into an agreement with another governmental entity that has been authorized by the Department to administer CDL skills testing for the purposes of administering the CDL skills tests to Employees of the non-certified government entity.
- 5.2.6 A Governmental Entity not certified to administer CDL skills testing is NOT permitted to enter into an agreement with an ISD or Regional Education Service Center that has been authorized by the Department to administer CDL skills testing for the purposes of administering the CDL skills tests to Employees of the non-certified government entity.
- 5.2.7 An ISD or Regional Education Service Center that has been authorized by the Department to administer CDL skills testing is NOT permitted to enter into an agreement with a governmental entity for the purposes of administering the CDL skills tests to Employees of the non-certified government entity.

### **5.3 Denial of Application**

The Department will deny an original application or an application for renewal:

- 5.3.1 of any entity that submits a fraudulent application;
- 5.3.2 of any entity that owes delinquent fees to the Comptroller of Public Accounts in Texas;
- 5.3.3 of any entity that does not include an application for a Designated Responsible Person (DRP) at the time of original application;
- 5.3.4 when the AO Applicant's physical location does not meet applicable Texas Accessibility Standards;
- 5.3.5 when the physical address is not recognized by the U.S. Postal Service; or
- 5.3.6 any violation of this Agreement.

### **5.4 Designated Responsible Person Requirements**

In order to be certified as an AO, the AO must employ a Designated Responsible Person who will comply with the requirements listed in this section.

- 5.4.1 The AO must provide evidence, satisfactory to the Department, that the Designated Responsible Person selected by the AO meets the requirements in

### Section 5.5. (Skills Testing Examiner Requirements).

- 5.4.2 May or may not be an Examiner.
- 5.4.3 Ensure AO agreements, Examiner documentation, and AO updates are sent to the Department's Program Review Section, as required. The Department will place all companies on a four-year renewal cycle for these requirements.
- 5.4.4 Must make available a monthly CDL test Activity Report to the Department's Program Review Section no later than the 10th day of each month. For example, a report for January 2021 is due to the Program Review Section no later than February 10, 2021. Negative reports are required even if no tests were administered.
- 5.4.5 Be accountable for the maintenance and security of all driver files.
- 5.4.6 Notify the Department's Program Review Section in writing within 24 hours of the AO identifying or being made aware that an Examiner has been arrested, charged, or convicted of a crime or has any cancellation, suspension, or revocation of their driving privilege.
- 5.4.7 Ensure only Examiners certified by the Department are permitted to administer CDL skills tests and that those tests are administered in accordance with FMCSA and Department guidelines.
- 5.4.8 Inform Examiners of any changes regarding CDL skills test administration or paperwork requirements as directed by the Department.
- 5.4.9 Notify the Department's Program Review Section in writing (within ten business days) of any changes in status of an Examiner, Designated Responsible Person, or AO, including any:
  - 5.4.9.1 terminations (if an Examiner is no longer employed, a completed form CDL-19 is required);
  - 5.4.9.2 withdrawals from the program;
  - 5.4.9.3 email address changes;
  - 5.4.9.4 relocations; or
  - 5.4.9.5 mailing address changes.
- 5.4.10 Use and obtain the correct required reports and score sheets from the Department.
- 5.4.11 Must attend all advance Training courses, workshops, seminars, and other instructional meetings, as required by the Department.

### **5.5 Skills Testing Examiner Requirements**

Only a Department-approved AO may submit an application for an Examiner.

- 5.5.1 The AO must provide evidence, satisfactory to the Department, that the Examiner selected by the AO, meets the requirements in this section.
- 5.5.2 Must be Domiciled in Texas. Exceptions are permitted for current and active duty military personnel and their spouses or dependents seeking CDL Examiner status, provided they can prove their required permanent change of station documents. These Examiners will have Out-Of-State driver licenses and must provide the Department with a certified driver record from their "State of record". The Department reserves the right to require additional record checks should the Department determine it has probable cause or deems it necessary

- during their participation in the program.
- 5.5.3 Examiners must be fingerprinted and a nationwide criminal background check must be performed as required in FMCSR, 49 CFR § 384.228(g) and (h), paid for by the AO. Criteria for not passing the criminal background check includes the following.
- 5.5.3.1 Any felony conviction within the last ten years.
  - 5.5.3.2 Any conviction involving fraudulent activities.
  - 5.5.3.3 An entering of an order of deferred adjudication for a felony, until five years after court supervision ceased and the case was dismissed.
  - 5.5.3.4 A conviction of an offense for driving while intoxicated, or for refusing or failing a blood/breath test during the five year period immediately prior to the date of application.
  - 5.5.3.5 Any driver license cancellation, suspension, or revocation of driving privileges connected to a moving violation for three years prior to applying to become an Examiner and must not have any thereafter.
- 5.5.4 When an Examiner's record shows any of the following, additional information will be secured from the Examiner or other sources and an individual evaluation will be made of the Examiner's suitability.
- 5.5.4.1 An arrest or indictment without conviction for a felony offense. If recent, the Examiner will generally be disqualified unless there are strong extenuating circumstances such as a mistake having been made, withdrawal of charges by arresting agency, etc.
  - 5.5.4.2 An arrest without conviction for driving while intoxicated. If recent, the Examiner will generally be disqualified unless there are strong extenuating circumstances.
  - 5.5.4.3 A pattern of a high number of entries of crashes and moving violation convictions, meaning at least two per year, in the Examiner's traffic record over any three-year period as determined by the Department, but who has not been suspended during that three-year period.
    - 5.5.4.3.1 Consider recency of last accident as well as total number.
    - 5.5.4.3.2 Consider cases in which Examiner was charged or in which other driver was not charged.
    - 5.5.4.3.3 Consider conditions and circumstances including occupation – amount of exposure to crashes and moving violation convictions.
  - 5.5.4.4 An arrest or conviction for a Class A or B misdemeanor.
    - 5.5.4.4.1 Consider recency.
    - 5.5.4.4.2 Consider nature of offense.
    - 5.5.4.4.3 Consider conditions.
- 5.5.5 The Examiner must submit a completed Examiner application to the Department's Program Review Section for review and approval. A completed renewal application is required every four years.
- 5.5.6 Be certified and licensed by the Department within 90 days after completing the Department's Examiner certification to administer skills test for the



issuance of a Texas CDL.

- 5.5.7 An Examiner may only be employed by one AO at a time.
- 5.5.8 Must attend and successfully complete any Skills Performance Evaluations (SPE), advance Training courses, workshops, seminars, and other instructional meetings, as required by the Department.
- 5.5.9 Maintain a copy of their valid DOT Physical (if applicable) and CDL in the AO files.
- 5.5.10 Companies must enroll each Examiner who administers CDL skills tests into the Driver Record Monitoring (DRM) program for the monitoring of any adverse activity on the Examiner's driver record.
- 5.5.11 Must be at least 21 years of age and hold a valid Texas CDL with the classification and endorsements required for operation of the CMV used in the skills tests conducted by the Examiner.

## **Section 6. Department Requirements**

### **6.1 AO Certification**

- 6.1.1 An application for AO certification must be filed with the Department on a form prescribed by the Department.
- 6.1.2 The Department will evaluate the written application submitted by the AO, and if satisfactory, schedule an on-site inspection of the AO's physical location.
- 6.1.3 The AO must allow the Department or FMCSA to inspect and audit its operations, facilities, and records as they relate to its Third-Party Skills Testing program, for the purpose of determining whether the AO is qualified to be certified to administer CDL skills tests.
- 6.1.4 A Certification will be issued to an AO meeting all the requirements in this Memorandum of Understanding and enters into an agreement with the Department to operate an approved testing program to administer skills tests to CDL Applicants.
- 6.1.5 The certificate issued by the Department allowing an AO to operate under the Third-Party CDL Skills Testing Program must remain on file at the physical location of the AO.
- 6.1.6 Agreements to administer Third-Party Skills Testing programs, including third-party tester certificates, are non-assignable.
- 6.1.7 Each agreement and certificate will become effective on the date of issuance and will expire four years from the effective date, unless otherwise cancelled or revoked.
- 6.1.8 All renewal application forms must be filed with the Department not less than 60 days prior to the time the certificate or agreement expires. The Department is not responsible for the timely issuance of any renewal certificate when the application is not received within the necessary timeframe.
- 6.1.9 Any AO may relinquish its certificate and agreement upon 30 days written notice to the Department.

### **6.2 Examiner Certification**

- 6.2.1 An Examiner certification will be provided to the AO on behalf of the Examiner of the AO who has made application, and demonstrated that the Examiner has completed all necessary Training as determined by the Department.
- 6.2.2 The certificate issued by the Department allowing an Examiner to operate under the Third-Party CDL Skills Testing program must remain on file at the physical location of the AO.
- 6.2.3 The Examiner's certificate must be surrendered to the Department when he or she leaves the employ of the AO, when the Examiner is no longer assigned Examiner duties by the AO, or when the certification has been cancelled.
- 6.2.4 Examiner certificates are not-re-assignable.
- 6.2.5 Each agreement and certificate will become effective on the date of issuance and will expire four years from the effective date, unless otherwise cancelled or revoked.
- 6.2.6 All renewal application forms must be filed with the Department not less than 60 days prior to the time the certificate or agreement expires. The Department is not responsible for the timely issuance of any renewal certificate when the application is not received within the necessary timeframe.
- 6.2.7 The AO must apply for Examiner certification on behalf of persons in their employ or to be employed on a form prescribed by the Department.
- 6.2.8 The Department will evaluate the written application and background check, submitted on behalf of the Examiner, including the individual's driver record. If satisfactory, the Examiner will be permitted to complete the Examiner Training. Training may be waived if the Examiner is seeking another certificate only because the Examiner has changed AOs.
- 6.2.9 Upon successful application, Training, and evaluation, an Examiner certificate will be issued evidencing a third-party Examiner's authority to conduct CDL skills tests for the classes and types of vehicles listed.
- 6.2.10 Evaluation will consist of successful completion of the 40 hour Certified Commercial Examiner Training, three CDL skills testing observations, and three CDL skills testing check-rides. Co-scoring must be within five points of each other.
- 6.2.11 Successfully complete the Department's refresher course and Examiner recertification every four years, and conduct ten complete tests per year to maintain their CDL Examiner certification. A complete test is defined as the Pre-Trip, Basic Control and Skills test. The ten tests for each type of test does not have to be the same Applicant.
- 6.2.12 Failure to maintain uninterrupted employment with the AO may result in the suspension of testing privileges and may result in the re-examination of any Applicant skills tested by the Examiner.

### **6.3 Third-Party Testing Oversight**

- 6.3.1 Inspections and audits will include, at a minimum, an examination of:

- 6.3.1.1 records relating to the third-party skills testing program;
- 6.3.1.2 evidence of compliance with Federal Motor Carrier Safety Regulations;
- 6.3.1.3 skills testing procedures, practices and operations;
- 6.3.1.4 vehicles used for testing;
- 6.3.1.5 qualifications of third-party Examiners; and
- 6.3.1.6 a testing program by testing a sample of drivers.
- 6.3.2 Allow representatives from the FMCSA or the Department to conduct both announced and unannounced audits without prior notice, including co-scoring along with the Examiner during skills testing to compare pass/fail results.
- 6.3.3 Upon request by the Department, provide copies of any applicable records required to be maintained. All records, documents, reports, and files required under this program must be kept in the State of Texas at a designated location identified in the AO's third-party application, as well as in the Designated Responsible Person's file, and available during normal working hours.
- 6.3.4 Upon request, provide representatives of FMCSA or Department with copies of all records required to be maintained in reference to this program.
- 6.3.5 These records must be maintained for the life of the MOU and three years after the MOU ends at the licensed location where the testing took place, and must include:
  - 6.3.5.1 The name and address of each AO Employee certified by the Department or AO.
  - 6.3.5.2 The name and address of each Applicant or student that was administered a CDL skills test.
- 6.3.6 Allow representatives from FMCSA or the Department to conduct Instant Random Sampling, Random Sampling, or retest any Applicant administered a CDL skills test by its Examiners.
- 6.3.7 Allow representatives from FMCSA or the Department to observe any or all portions of an Applicant's CDL skills test (including those portions occurring inside vehicles) being administered by its Examiners.

## **Section 7. Skill Testing Applicants**

### **7.1 Eligibility Requirements**

- 7.1.1 Meet all applicable FMCSA and Department requirements.
- 7.1.2 Qualify under the provisions of FMCSR (49 CFR Parts 383 and 391) to operate a CMV.
- 7.1.3 Be 18 years of age or older to move (intrastate) cargo originating and delivered within the boundaries of Texas or 21 years of age or older to move (interstate) cargo over state lines governed by Texas regulations.
- 7.1.4 Have good vision as determined by visual screening under 49 CFR § 391.41(b)(10).
- 7.1.5 Successfully pass applicable knowledge test.
- 7.1.6 Possess a valid driver's license.

- 7.1.7 Possess a valid commercial learner's permit (issued 15 or more days prior to the day test is administered).

## **7.2 Supporting Documentation**

AOs must maintain a separate driver file for each Applicant administered a CDL skills test. Driver files will be kept for three years from the date the test was administered; three years after the driver leaves employment; or three years after the AO is withdrawn from the CDL third-party Skills Testing program, whichever is greater. At a minimum, driver files will include the following documents for each Applicant (copies must be legible and may be stored electronically).

- 7.2.1 Copy of Driver License reflecting the Applicant's current address.
- 7.2.2 Copy of Commercial Learner Permit (CLP).
- 7.2.3 Three-year driver record (cannot be more than 30 days old on the day skills test is administered).
- 7.2.4 All original CDL-41 CDL Score Sheets if an Applicant did not pass the skills test or failed to return.
- 7.2.5 Original CDL-41 CDL Score Sheets if an Applicant passed the skills test.

## **Section 8. CDL Skills Test Administration**

- 8.1 An Examiner may not administer a CDL skills test until trained in accordance with 49 CFR § 383.75 and certified by the Department.
- 8.2 An Examiner may not charge or receive any compensation (other than normal salary or overtime pay) from the AO or Applicant for the administration of a CDL skills test. Example: money, gifts, lunches, favors, goods or services, trades, or any item of value.
- 8.3 An Examiner may not administer CDL skills tests for family members or relatives. Examiners must never perform transactions for themselves or for their families. Additionally, an Examiner must never perform a transaction for someone who resides in the Examiner's home. Upon request, the Department will determine whether testing a specific Applicant violates this requirement.
- 8.4 An Examiner may not assist an Applicant in a manner that provides an unfair advantage in passing the CDL skills tests, such as giving hints or excessive probing during the vehicle pre-trip inspection, stopping the vehicle before it hits a boundary during the basic control skills, or Training on the approved road test route.
- 8.5 An Examiner must administer the same CDL skills test that the Department's Examiners administer in accordance with provisions of law and guidelines established by FMCSA, the Department, and the CDL Examiner Manual.
- 8.6 An Examiner must hold the appropriate Class CDL with applicable endorsements and can only administer CDL skills test for a Class of license that is equal to or below what was certified by the Department.
- 8.7 An Examiner must conduct the CDL skills tests in the appropriate group/class or "representative vehicle" the driver is currently permitted for and intends to operate.
- 8.8 Prior to testing, an Examiner must inspect the vehicle to verify it meets all motor carrier safety regulations and is otherwise safe to operate.
- 8.9 The Examiner must not permit the vehicle to contain explosives or other hazardous

material during testing.

- 8.10 During the skills test, there cannot be anyone else in or around the vehicle other than one (test) Applicant, the Examiner, and federal or Department auditors or Employees. A Designated Responsible Person can observe the skills test for compliance/quality control purposes; however, this person may not interact with the Applicant or Examiner during the testing process.
- 8.11 An Examiner who is also an instructor, either as a part of a school, Training program, or otherwise, is prohibited from administering a skills test to an Applicant who received skills Training by that Examiner. In other words, an Examiner cannot administer a CDL skills test to any Applicant if they spent any time Training the student or Employee (hands-on) vehicle pre-trip inspection, basic control skills, or BTW requirements. Classroom Training is excluded from this requirement.
- 8.12 An Examiner must examine each Applicant's MVR and refuse to test any driver whose license is currently or subject to being suspended, revoked, disqualified, or cancelled. MVR cannot be more than 30 days old on the day skills test is administered. An official MVR may be obtained at the following website.  
[www.dps.texas.gov/driverlicense/driverrecords.htm](http://www.dps.texas.gov/driverlicense/driverrecords.htm).
- 8.13 An Applicant's initial Commercial Learner Permit (CLP), for that class of license, must have been issued 15 days or more before they can be administered a CDL skills test. The CLP is valid for 180 days.
- 8.14 No translator or other intermediary will be permitted to interpret portions of the test that are scored on the basis of an Applicant's verbal or written response. Nothing prohibits the use of a translator during Training to present questions or receive answers from an Applicant in any language on matters that do not require a scored response.
- 8.15 The Examiner may only conduct the CDL skills test in English, as required by FMCSR.
- 8.16 CDL skills testing must start on time, except in extenuating circumstances, in accordance to the schedule provided to the Department. The Department must be notified immediately through the Commercial Skills Testing Information Management System (CSTIMS) if a test is cancelled or rescheduled.
- 8.17 Complete the entire skills test without interruption. A brief (10–15 minute) break is permitted after the vehicle pre-trip inspection. Delaying the test to take care of personal matters (such as personal business, breakfast, or lunch) is prohibited.
- 8.18 Examiners are permitted to carry-over or bank scores for Applicants who successfully complete the vehicle pre-trip inspection or basic control skills portion of the CDL skills test if the following conditions are met.
- 8.18.1 Examiners must complete the worksheet for banking scores before administering any portion of a skills test.
- 8.18.2 Maintain on file a copy (or original) of all scoresheets and the worksheet for banking scores from previous tests administered during the current 180-day CLP period.
- 8.18.3 All portions of the CDL skills test must be administered if the Examiner is not in possession of the driver's file to verify previous test scores or if a different type of vehicle was used.

- 8.18.4 Previous test scores from CDL skills tests administered by the Department or a different AO are not transferrable. For example, an Applicant is not permitted to carry-over or bank any previous scores if they go from the Department to an AO or vice-versa.
- 8.18.5 Using a different vehicle is permitted if the Examiner compares and verifies that the new vehicle is representative of the previous vehicle. The vehicles must match when it comes to these items.
  - 8.18.5.1 Class
  - 8.18.5.2 Air Brakes
  - 8.18.5.3 Auto or Manual Transmission
  - 8.18.5.4 Same articulation for combination vehicles. (5th wheel, pintle hook, etc.)
  - 8.18.5.5 Bus/Truck/Truck Tractor
- 8.18.6 Examiners may re-administer all failed portions of the skills test.
  - 8.18.6.1 A driver who fails the pre-trip inspection due to low score or does not perform the air brake check correctly is required to start over from the beginning during their next test, no scores or items inspected are carried over.
  - 8.18.6.2 A driver who fails the parallel parking maneuver is required to retake and successfully pass all the basic control maneuvers (straight line backing, off-set backing to the left or right, and parallel parking conventional or sight side) before going on the road test.
  - 8.18.6.3 A driver who fails the road test is required to retake the entire road test.
- 8.18.7 Once a driver obtains their initial CLP, they have 180 days or until their CLP expires or is renewed to pass the skills test. Afterwards, previous scores will be voided and the entire CDL skills test will have to be retaken (pre-trip inspection, basic control skills, and road test).
- 8.19 Skills test must be administered at an approved site in Texas and passed in sequence: (1) Pre-trip inspection; (2) Basic control skills; and (3) Road test. An Applicant cannot advance to the next sequence if the Applicant fails the current sequence being administered. After failing any sequence, in any combination three times, the applicant must reapply and retake all skills tests.
- 8.20 AOs must only administer skills testing to their own students or Employees.
- 8.21 After being authorized to conduct CDL skills testing by the Department, the AO will be issued a series of controlled forms that must be completed in black ink and used in numerical order.
  - 8.21.1 Complete all applicable areas of form CDL-41, regardless if a test was passed or failed.
  - 8.21.2 Upon passing or failing a CDL test, all information must be entered into CSTIMS within 24 hours of the test.
- 8.22 Any Applicant (regardless of driving experience) must wait one business day if the Applicant fails on any attempt at the skills test before being retested.
- 8.23 Examiners are permitted to have their CDL skills test administered by a Department Examiner or another Examiner within the same AO.
- 8.24 An Examiner who leaves the employment of a licensed AO and wishes to transfer to

another licensed AO must:

8.24.1 Have the new AO submit a new Examiner application and complete all Department requirements as a new Examiner.

8.24.2 Successfully complete a Skills Performance Evaluation.

8.25 CDL tests that are postponed due to severe weather or emergencies must be noted on the CDL-41, in CSTIMS and reported to the CDL TPST Audit Team within one business day.

## **Section 9. Penalties and Appeals**

### **9.1 Administrative and Testing Violations**

9.1.1 The Department reserves the right to take prompt and appropriate remedial action against an AO if the AO or Examiner of the AO fails to comply with State or federal standards for the CDL testing program, or with any other terms of the third-party contract. This includes any serious violation which demonstrates an Examiner or AO is a risk to the public, Department personnel, or the driver, including failing to maintain a professional relationship with students at all times.

9.1.2 The falsification of any required records, applications, or forms by an AO, Designated Responsible Person, or Examiner can result in the suspension, or revocation, of their Third-Party Testing certification. Depending upon the egregiousness or severity of the violation, it can result in the AO's expulsion from the program. Such falsification may also result in criminal prosecution pursuant to Texas Penal Code § 37.10.

9.1.3 Failure to comply with all Third-Party Tester Program requirements can result in the suspension or revocation of the AO, Designated Responsible Person or Examiners certification.

### **9.2 Operational Violations**

9.2.1 Within ten calendar days of occurrence, the AO must notify the Department of any of the following operational violations.

9.2.1.1 The AO employs individuals currently employed by the Department's Driver License Division.

9.2.1.2 With the exception of a retired Employee, the AO employs an individual who has not been separated from employment of the Driver License Division for at least 365 calendar days.

9.2.1.3 The AO owes delinquent fees to the Comptroller of Public Accounts in Texas.

9.2.1.4 The AO lacks a Designated Responsible Person.

9.2.1.5 The AO's location fails to meet Texas Accessibility Standards.

9.2.1.6 The AO fails to have a telephone that registers to the name listed on the AO's certification.

9.2.1.7 The AO, if rated by FMCSA, currently has an unsatisfactory rating from FMCSA.

- 9.2.1.8 The AO fails to maintain a continuous surety bond or required insurance.
  - 9.2.1.9 The bond or insurance amount is no longer sufficient to cover the amount of Examiners conducting skills testing.
  - 9.2.1.10 An Examiner does not maintain a valid CDL in the same class the Examiner is authorized to certify other drivers.
  - 9.2.1.11 The number of vehicles owned or leased fall below the minimum requirements.
  - 9.2.1.12 The AO changes address, the basic control skills testing location, or its road test route without prior notification and authorization by the Department.
  - 9.2.1.13 The AO fails to maintain an approved basic control skills testing location or its road test route.
  - 9.2.1.14 The AO violates any requirement of this Agreement.
- 9.2.2 If the AO fails to correct any outstanding violations within five business days, the Department has the authority to suspend an AO's certification to conduct CDL skills testing for up to one year.

### **9.3 Examiner Violations**

#### **9.3.1 Suspensions**

The AO penalties for non-compliance violations committed by an Examiner with this program are defined and applied as follows.

Administrative Non-Compliance: Failure to meet requirements for reporting, notifications, record keeping, or similar acts that do not compromise test integrity or public safety.

First Occurrence will result in a warning letter.

Second Occurrence (within one year of first offense) will result in a secondary warning letter.

Third Occurrence (within one year of the most recent prior offense) will result in a 30-day suspension.

Fourth Occurrence (within one year of the most recent prior offense) will result in a one-year suspension.

#### **9.3.2 Revocations**

9.3.2.1 Discrepancy in Test Procedure: If the Department determines the AO knowingly or intentionally permitted an Examiner to fail to properly administer a required portion of an otherwise complete test procedure, such as: omission of a required maneuver, failure to include all required parts of a test procedure (such as omission of the pre-trip inspection), failure to use an approved test route, use of an unsafe vehicle, erroneously scoring the Applicant to guarantee passing, or other action determined to significantly compromise the integrity of the test process or public safety will have the AO's certification revoked.



First Occurrence will result in termination of testing certification.

9.3.2.2 Fraud: If the Department determines the AO knowingly or intentionally allows an Examiner to abuse the testing authority granted to them through the certification process to gain profit through issuance of a license to an Applicant that has not passed a complete skills test, falsification of records or information, refusal to allow access to all documents, papers, letters and material subject to the provisions of the CDL third-party skills testing program or commits an act that, in the opinion of the Department, compromises the integrity of the Program.

First Occurrence will result in termination of testing certification.

Note: The Department will have sole discretion to determine if the level of noncompliance and Substandard Testing is a permanent removal from the program.

## **9.4 AO Violations**

### **9.4.1 Suspensions**

For operational violations listed in Section 8.2, the Department will take into account the seriousness of the violation, the repetitiveness, whether the violation has been corrected, and how long it took the AO to remedy the violation in determining if any penalty should be decided against the AO.

First Occurrence will result in a warning letter.

Second Occurrence (within one year of first offense) will result in a secondary warning letter.

Third Occurrence (within one year of the most recent prior offense) will result in a 30-day suspension.

Fourth Occurrence (within one year of the most recent prior offense) will result in a one-year suspension.

### **9.4.2 Revocations**

9.4.2.1 Discrepancy in Test Procedure: If the Department determines the AO knowingly or intentionally permitted an Examiner to fail to properly administer a required portion of an otherwise complete test procedure, such as omission of a required maneuver, failure to include all required parts of a test procedure (such as omission of the pre-trip inspection), failure to use an approved test route, use of an unsafe vehicle, erroneously scoring the Applicant to guarantee passing, or other action determined to significantly compromise the integrity of the test process or public safety will have the AO's certification revoked.

First Occurrence will result in a termination of testing certification.

9.4.2.2 Fraud: If the Department determines that the AO knowingly or intentionally abuses the authority granted to gain profit through issuance of a license to an Applicant that has not passed a complete skills test, falsification of records or information, refusal to allow access to all documents, papers, letters and material subject to the provisions of the CDL third party skills testing program or commits an act that, in the opinion of the Department, compromises the integrity of the Program.

First Occurrence will result in a termination of testing authority.

Note: The Department will have sole discretion to determine if the level of noncompliance and Substandard Testing is a permanent removal from the program.

## **9.5 Denial, Suspension, Cancellation, or Revocation**

- 9.5.1 DENIAL, SUSPENSION, CANCELLATION, OR REVOCATION OF APPROVAL. The Department may deny, suspend, cancel, or revoke any approval or authorization provided under this agreement if the Department finds that the action is necessary to maintain the integrity, security, honesty, or fairness of the operation or administration of skills testing if the authorized organization or Examiner:
- 9.5.1.1 Does not satisfy the requirements established under this agreement to receive or retain approval;
  - 9.5.1.2 Permits fraud or engages in a fraudulent practice with reference to an application to the agency;
  - 9.5.1.3 Permits fraud or engages in a fraudulent practice in an action between the Examiner and student or Employee; or
  - 9.5.1.4 Fails to comply with the rules of the Department.
- 9.5.2 NO REVIEW OR APPEAL. This agreement or a decision by the Department under this section is not subject to further review or appeal administratively or contractually.

## **Section 10. General Terms**

### **10.1 Term of Contract, Termination, and Amendments**

This agreement automatically terminates four years after the date it is signed and approved by the Department. In addition to other remedies, the Department may immediately terminate an Agreement if the AO fails to comply with the terms of this agreement or applicable laws, rules, or regulations. The Department has the sole authority to amend this agreement if necessary and will not accept proposed changes to its wording.

### **10.2 Confidentiality**

- 10.2.1 **Ownership and use of Confidential Information.** The Department may share Confidential Information with the AO (or its affiliates, employees,

subcontractors, or other agents). If sharing Confidential Information, the Department owns or has third-party permission to do so and it is given solely in connection with any duties obligated under this Agreement.

- 10.2.2 **Overall non-disclosure and protection.** AO must keep Confidential Information shared under this Agreement confidential and may not reproduce it or share it except according to the terms of this Agreement. AO must protect it in accordance with the security policies and processes in which it would protect its own Confidential Information, which should be no less than a reasonable level of care. AO may not store the Confidential Information outside of the United States.
- 10.2.3 **Destruction.** AO must destroy all Confidential Information: (1) upon termination of the Agreement; (2) when the duties necessitating the sharing are completed; or (3) the Department requests AO to do so at any time. AO must email notice of destruction to the program coordinator within three days of any of the above occurring.
- 10.2.4 **Limited disclosure.** AO may only disclose Confidential Information to its affiliates, employees, subcontractors, or agents whose services are required in furtherance of AO's duties under this Agreement. AO guarantees that it will require its affiliates, employees, subcontractors, or agents to comply with this Agreement.
- 10.2.5 **Remedies and notice for unauthorized disclosure.** AO and its affiliates, employees, subcontractors, or agents may be subject to criminal, civil, or administrative remedies if AO or one of its affiliates, employees, subcontractors, or agents discloses or uses Confidential Information in an unauthorized manner or in violation of this Agreement. If Confidential Information is disclosed or used in an unauthorized manner or in violation of this Agreement, AO must notify the Department within 24 hours and email a detailed written description of the event.

### 10.3 Severability

The parties acknowledge that if a dispute between the parties arises out of this Agreement or the subject matter of this Agreement, including a dispute over possibly ambiguous language, they would want the court to interpret this Agreement as follows:

- 10.3.1 With respect to any provision that it holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision;
- 10.3.2 If an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of the Agreement will remain in effect as written;
- 10.3.3 By holding that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable; and
- 10.3.4 If modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this Agreement, by holding the entire Agreement

unenforceable.

### 10.4 Program Coordinators

The parties' program coordinators are responsible for all communications and contacts required to manage this Agreement. Each party will notify the others of any changes within ten business days.

DPS	TPST
Name:	Name:
Title:	Title:
Email:	Email:
Phone:	Phone:
Fax:	Fax:

The undersigned signatories have full authority to enter into this Agreement on behalf of the respective parties.

**ENTITY**

**DEPARTMENT OF PUBLIC SAFETY  
OF THE STATE OF TEXAS**

\_\_\_\_\_  
**Signatory Name**  
**Title**

\_\_\_\_\_  
**Signatory Name**  
**Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**