



South Carolina Department of Motor Vehicles

CDL Third-Party Tester Agreement

DL-404A
(Rev. 01/2025)

This Agreement is entered into between _____, the Third-Party Tester, ("TPT"), and the South Carolina Department of Motor Vehicles ("SCDMV"). The Agreement is pursuant to the standards and requirements of Federal Motor Carrier Safety Regulations (FMCSR) and sets forth the terms and conditions under which TPT will provide third-party commercial driver's license (CDL) testing services in agreement with the SCDMV under the SCDMV Commercial Driver's License Third-Party Tester's Program ("TPT Program"). This Agreement shall commence on the date of the last signature below and shall continue until the date of termination, as outlined in Part I, Section VI of this agreement or as otherwise provided. For purposes of this Agreement, the terms "contract" and "agreement" shall have the same meaning.

Pursuant to this agreement, the parties acknowledge that TPT will obtain and process information from applicants that will be collected and stored in its normal course of business. The parties agree that some, if not all, of this information is of a personal nature, which the User understands to mean any information that identifies or describes an individual including, but not limited to, an individual's name, home address (excluding zip code), date of birth, driver identification number, customer number, height, weight, race, and other physical details.

TPT must comply with this agreement and all federal and state laws governing the disclosure, protection, and use of personal information, including but not limited to the Driver Privacy Protection Act, ("DPPA"), 18 USC §§ 2721 *et seq.*; and privacy provisions enacted by the State of South Carolina, SC Code §§56-3-510 to -540 and §§30-4-160 and -165; TPT shall not disclose, sell, or otherwise transfer the applicant's personal information to any third-party for any purpose not expressly authorized by law.

The SCDMV and TPT, in consideration of their mutual duties and responsibilities, as outlined in this contract, agree to the following terms and conditions.

PART I

I. THIRD-PARTY TESTER AGREES TO:

- A. **Statutes/Regulations/Program Standards:** Comply with all applicable South Carolina statutes and regulations. The TPT further agrees to be bound by the policies of the SCDMV including those outlined in the ***Commercial Driver's License Third-Party Tester's Program Standards*** ("Program Standards") and the FMCSR. TPT agrees that it meets the definition of "Third-Party Tester" as defined in the Program Standards and that any Third-Party Skills Test Examiner (hereafter referred to as "TPT Examiner") it utilizes for skills testing also meets the Program Standards definition for "Third-Party Skills Test Examiner".
- B. **Indemnification:** Unless the TPT is an S.C. government entity or an employee thereof, the TPT agrees to indemnify and hold harmless the SCDMV and the State of South Carolina 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 damages arising from any act or omission by TPT, its TPT Examiners, agents or employees arising from a breach of any of the terms of this agreement.



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C. **Examinations/Inspections/Audits:**

1. The TPT authorizes the SCDMV, Federal Motor Carrier Safety Administration (FMCSA), or its representatives to conduct random examinations, inspections, and audits of its records, facilities, and operations without prior notice pursuant to 49 CFR §383.75. These inspections must be conducted at least once every two years or as deemed necessary by the SCDMV. The TPT agrees to indicate the normal working hours of the associated TPT Program in the appropriate space below.
2. At least once every two years or more frequently as deemed necessary by the SCDMV, the SCDMV must do one of the following for each TPT Examiner:
 - a) Have State employees covertly take the tests administered by the TPT as if the State employee were a test applicant;
 - b) Have SCDMV employees co-score along with the TPT Examiner during CDL skills tests to compare pass/fail results; or
 - c) Re-test a sample of drivers who were examined by the TPT to compare pass/fail results.
3. In the event retests are deemed necessary for cause, the TPT agrees to reimburse the SCDMV for costs associated with the retest.

- D. **Bond:** The TPT agrees to maintain a bond of not less than \$10,000 to pay for re-testing drivers in the event that the third-party or one or more of its TPT Examiners, agents, or employees is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A TPT that is a S.C. State government entity is not required to maintain a bond.

- E. **Skills Test Minimum:** All TPT Examiners must meet the ten skills test minimum pursuant to 49 CFR 383.75(c). TPT Examiners unable to meet the requirement will be afforded a one-time opportunity to successfully complete a refresher course or co-score. If the TPT Examiner has not completed at least six tests within the first six months of the certification period and does not reasonably believe he or she will meet the required ten-test minimum by the end of the 12-month period, the TPT Examiner or the TPT must notify the SCDMV via the email listed below. The one-time refresher course or co-score will be scheduled by the SCDMV, prior to the certification expiration, with input from the TPT Examiner. The TPT Examiner must make all attempts to be available at the SCDMV's convenience for the refresher course or co-score. If the TPT Examiner does not attend the scheduled refresher training or co-score, or if notification is not received by the end of the seventh month, the TPT will be moved to the end of the waitlist, at which point the SCDMV will not be able to ensure an opportunity for refresher training or co-scoring prior to expiration. By signing this agreement, the TPT and TPT Examiners understand that new and compliant TPTs and TPT Examiners are given preference for co-scoring and refresher training opportunities over the wait list of TPT Examiners who did not complete the ten-test minimum. This one-time offering does not apply if, at the end of the 12-month period, ten or more tests were given. If TPT Examiners meet the ten-test minimum despite being co-scored or attending the refresher course, they will continue to be provided the opportunity for future refresher training or co-scores. If a TPT Examiner does not meet his or her ten-test minimum after receiving a co-score or refresher course, that one co-score suffices for the one-time offering. TPT



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Examiners unable to meet the ten-test minimum requirement in the subsequent twelve months will be removed from the TPT Program.

- F. **Administer Skills Tests:** The TPT must only allow TPT Examiners who meet the following to administer skills tests:
1. Meet requirements in 49 CFR §384.228;
 2. Successfully completed a formal CDL skills test examiner training course as prescribed by the SCDMV; and
 3. Certified by the SCDMV as a CDL skills examiner qualified to administer CDL skills tests.

The SCDMV will maintain a list of all individuals of the TPTs who have been certified by the SCDMV as TPT Examiners. In the event of a dispute over which individuals of the TPTs have been certified as TPT Examiners, the SCDMV's list shall prevail.

G. **Documents and Records Maintained:**

1. The TPT must maintain copies of the following records at its principal place of business:
 - a) State certificate authorizing the TPT to administer a CDL skills testing program for the classes and types of commercial vehicles listed;
 - b) A copy of each TPT Examiner's State certificate indicating the class(es) and type(s) of vehicles authorized to test;
 - c) A copy of its current Commercial Driver's License Third-Party Tester Agreement with the SCDMV;
 - d) A copy of the TPT's routes approved by the SCDMV; and
 - e) A copy of each TPT Examiner's training record.
2. The TPT must also maintain at its principal place of business a separate driver file for each individual administered a CDL test. The file must be maintained for three years from the date the test was administered. In the event TPT is withdrawn from the program, driver files must be retained for three years from the date of withdrawal. Files for each applicant must include, at a minimum, the following documents and any additional documents determined by the SCDMV (copies must be legible):
 - a) A copy of driver's license reflecting the applicant's address at the time of CDL testing;
 - b) A copy of Applicant's Commercial Learner's Permit (CLP);
 - c) 447RT Test Score Sheets;
 - d) A copy of DL-404B (Worksheet for Banking Scores); and
 - e) Original Certification of Conditions.

- H. **License:** Prominently display the TPT license in their place of business.

- I. **Fee Acknowledgement:** TPT agrees to pay fees, as determined by the SCDMV, which are sufficient to defray the actual cost incurred by the SCDMV for administering and evaluating the TPT Program and for carrying out any other activities considered necessary by the SCDMV to assure sufficient training for the persons participating in the TPT Program. The SCDMV reserves the right to increase these fees as warranted to defray the cost incurred by the SCDMV for conducting training and oversight of the TPT Program's participants. Prior to any fee



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increase, the SCDMV will notify third-party testers no less than 90 days before the effective date.

- J. **License Suspension**: The TPT agrees to notify the SCDMV within twenty-four hours of a third-party skills test examiner's conviction of any crime or suspension, cancellation, or revocation of driving privileges.
- K. **Cause for Suspension**: The TPT and third-party skills test examiners are aware that any falsifications under 49 CFR §383.75 are cause for a sixty (60) day disqualification of commercial driver's license pursuant to SC Code §56-1-2090(D).
- L. The TPT's relationship to SCDMV is solely as independent contractor and no aspect of this agreement should be interpreted as creating an employer-employee relationship.

II. ADMINISTRATION OF TPT PROGRAM

- A. **TPT Program Administration and Oversight**: The SCDMV administers the TPT Program for the State of South Carolina and monitors organizations and third-party skills test examiners to ensure compliance with state and federal statutory, regulatory, and contractual requirements.
- B. **SCDMV Property**:
 - 1. The TPT acknowledges and agrees to take full responsibility for the body cameras, docking stations, and all equipment provided by the SCDMV. This includes, but is not limited to, ensuring proper use, maintenance, and safekeeping of the equipment. In the event of any damage, loss, or malfunction of the equipment that arises from improper handling, misuse, negligence, or failure to comply with the provided maintenance guidelines, the TPT will be held financially accountable for the repair or replacement cost.
 - 2. The TPT is required to promptly report any issues with the equipment to the SCDMV within 24 hours of occurrence. Failure to do so will result in the TPT being liable for any further damages incurred due to the delay in reporting.
 - 3. Upon withdrawal or removal from the program the TPT agrees to return all equipment to the SCDMV in the same condition as it was received barring normal wear and tear. Any damages or discrepancies identified upon return will be the responsibility of the TPT.
 - 4. TPT Examiner identification cards, Third-Party Tester's manuals, Program Standards document, test certificates, and test scoring forms are the property of the SCDMV and must be returned to the SCDMV immediately upon the cancellation, termination, or voiding of this Agreement.

III. TEST ADMINISTRATION

- A. **Tests**: The TPT and TPT Examiner must ensure that each test is administered in strict accordance with the relevant statutes, methods, standards, and examination criteria as designed in accordance with the FMCSR and as prescribed by the SCDMV.
 - 1. The TPT must use only designated road test routes that have been approved by the SCDMV.



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2. The TPT and TPT Examiner must submit a schedule of CDL skills testing appointments to the SCDMV no later than two business days prior to each test.
3. **Body Worn Cameras:** TPT examiners must use the designated body worn camera (BWC) for every skills test administered as described in the Program Standards. The cameras shall not be used for any other purpose. All videos must be labeled immediately upon completion of the test. Anytime a test is given, the camera must be docked to upload the video no later than the evening on the day the test was administered.

- B. **Report Skills Test Results:** The TPT must notify the SCDMV of the results of all skills tests administered by the TPT through secure electronic means.

IV. THE SCDMV AGREES TO:

- A. **Testing:** Permit TPT named in this agreement to administer driver's license skills tests specified in this agreement provided the TPT adheres to the terms and conditions set forth in this agreement, 49 CFR § 383.75 and the **Program Standards**.
- B. **Administration and Enforcement:** Administer and enforce the provisions of the commercial driver's license third-party tester requirements as set forth in this agreement, SC Code §56-1-2080, 49 CFR §383.75, 49 CFR §383.84, 49 CFR §384.228, the applicable FMCSRs, and the **Program Standards**.
- C. **Non-Compliance:** The SCDMV must take prompt and appropriate remedial action against a TPT that fails to comply with SCDMV, or State, or Federal standards for the CDL testing program, or with any other terms of the third-party tester agreement.

V. FEDERAL TITLE VI PROGRAM

- A. **Title VI Program Notice:** TPT must post the **SCDMV Title VI Program Notice (English and Spanish versions) informing customers of how to file a Title VI complaint with SCDMV in a conspicuous place at each location.**
- B. **Title VI Customer Complaint Form:** TPT must refer customers requesting services covered by Title VI to SCDMV. TPT must make the SCDMV Title VI Customer Complaint Form (AD-809E English and AD-809S Spanish versions) available to all customers who wish to file a Title VI complaint.

VI. TERMINATION OF THIS AGREEMENT

- A. **Termination Date:** Unless earlier terminated as otherwise provided, this agreement shall terminate September 30, _____.
- B. **Early Termination:** This agreement reserves the right of the SCDMV to take prompt action and appropriate remedial action against the named Third-Party Tester, including suspending, terminating, or revoking the licensing authority of the Third-Party Tester and/or any individual TPT Examiner to conduct skills tests. This authority is invoked in the event the Third-Party Tester and/or any TPT Examiner associated with the Third-Party Tester fails to adhere to the terms and conditions of



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SC Code of Law Section 56-1-2080, FMCSR 49 CFR Part 383.75 and/or additional applicable provisions of the FMCSR, as well as the terms of this agreement and/or the **Program Standards**.

VII. PERSONAL DATA CONFIDENTIALITY AND NON-DISCLOSURE

The TPT agrees that in the performance of this agreement, it collects and processes the applicant's personal information. TPT agrees that it is responsible for the security and privacy of Personally Identifiable Information (PII) obtained during the TPT Program. For purposes of this agreement, PII has the same meaning as the definition of "personal information" and "highly restricted personal information" as found under the DPPA.

TPT understands that PII means any information that identifies or describes an individual including, but not limited to, an individual's name, home address (excluding zip code), date of birth, driver identification number, customer number, height, weight, race, and other physical details.

TPT is responsible for safeguarding the PII whether in writing in printed form or on computerized equipment housing customer data and must limit access to only those persons who are authorized users of the network who have been properly trained and instructed as to their duties and responsibilities as authorized users under this contract.

TPT agrees to comply with all applicable laws and regulations governing the collection, processing, and protection of PII. Such laws include, but are not limited to, the DPPA, 18 USC §§ 2721 *et seq.*; and privacy provisions enacted by the State of South Carolina, including, The Family Privacy Protection Act, §§30-2-10 *et seq.* which prohibits obtaining or using public records for commercial solicitation, and SC Code §§56-3-510 to -540 and §§30-4-160 and -165, and applicable statutes subsequently enacted.

VIII. PRIVACY POLICY & CONSENT AGREEMENT REQUIREMENT

TPT is required to secure a signed written Privacy Policy & Consent Agreement from each of its applicants participating in the TPT Program. This agreement, a prerequisite for acceptance into the program, entails the TPT's privacy policy and the applicant's consent to the release of their PII to the TPT.

The Privacy Policy & Consent Agreement must encompass, at a minimum, the following provisions:

A. Information Collection and Storage

The TPT, acting as the applicant's third-party tester, is mandated to collect and securely store the applicant's personal information. This is essential for providing third-party commercial driver's license (CDL) testing services.

B. Data Protection Responsibility

The TPT bears the responsibility of safeguarding the applicant's personally identifiable information against unauthorized and improper disclosure.



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C. Definition of Personally Identifiable Information

"Personally identifiable information" is defined as any data identifying or describing an individual. This includes but is not limited to, the individual's name, home address (excluding zip code), date of birth, driver identification number, customer number, height, weight, race, and other physical details.

D. Legal Compliance

The TPT commits to compliance with all relevant Federal and South Carolina laws pertaining to the protection of the applicant's personally identifiable information.

E. Purpose Limitation

Personally identifiable information obtained will be utilized exclusively for purposes related to the CDL Third-Party Tester Program and no other purpose, except as otherwise mandated by law.

F. Signed Written Consent

Applicant acknowledges their consent to the use and disclosure of their personal information to the TPT by printing their name and affixing their signature.

IX. REQUIRED SECURITY MEASURES

A. Third-party tester agrees that these guidelines apply to any computer used to access or enter customer information relating to third-party testing.

1. Computers (workstations and servers) must be running a current and supported operating system. TPT must ensure that operating systems are patched with the latest updates in a timely manner.
2. Computers (workstations and servers) must be running a current and supported anti-virus solution. The anti-virus solution must provide real-time protection. TPT must keep anti-virus solution current and ensure that virus definition updates are applied daily.
3. User must use a current and supported web browser.
4. All non-removable storage in computers should be encrypted with at least 256-bit AES encryption.
5. Any removable storage used to store customer PII must be encrypted using 256-bit AES encryption.
6. All computers used to access or enter customer data should be behind a firewall.
7. All electronic documents (electronic forms or scanned copies of documents) must be stored encrypted at rest using at least 256-bit AES encryption.
8. If electronic documents containing PII are transmitted over the Internet, they must be encrypted in transit using at least AES 256-bit encryption.
9. Users must use strong passphrases for logging into their computers. The passphrase should be at least 15 characters long and contain at least one character from the following four categories: uppercase character, lowercase character, number, and a special character.
10. Computer screens must be locked when not in use and must auto-lock after no more than 15 minutes of inactivity.



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- B. Third-party tester agrees that these guidelines also apply to customer information relating to third-party testing:
1. All documents containing PII must be secured in locked storage away from public access. No documents containing PII shall be left in public view.
 2. The TPT must notify customers if any PII data relating to third-party skills testing is lost or stolen.
 3. TPT Staff should take annual security awareness training. As a minimum this training must emphasize the importance of protecting customers' private information to include personally identifiable information (PII) against unauthorized disclosure.
 4. Background Checks: All User or contractor employees requiring access to customer PII. Any person with criminal convictions for crimes involving fraud or dishonesty shall be prohibited from accessing customer records containing PII.

X. Data Destruction Guidelines

No customer information should be kept longer than what is required by state and federal law. Once customer information is no longer needed it must be destroyed using the following guidelines:

Spinning disk hard drives must be degaussed twice and then physically destroyed. As an alternative to degaussing a spinning disk, hard drives should be overwritten at least three times to Department of Defense standards and then physically destroyed. Solid state hard drives should be overwritten at least three times to Department of Defense standards and then physically destroyed.

Hard copies of forms or other documents containing customer information should be destroyed by either incineration or by using a cross-cut shredder. If using a cross shredder it should conform to the DIN 66399 P-4 or higher standard.



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PART II

Pursuant to S.C. Code § 56-1-2080, 49 CFR §383.75, and additional applicable FMCSR this agreement is entered into by and between the SCDMV and TPT.

This agreement authorizes Third-Party Skills Test Examiners of TPT who have been certified by the SCDMV to administer the applicable commercial driver's skills test referenced in SC Code § 56-1-2080, 49 CFR §383.75 and applicable regulations of the FMCSA on behalf of the SCDMV and the State of South Carolina. The rights and duties conferred upon the TPT pursuant to this agreement are not assignable or transferable.

The normal operating hours of the TPT named herein are as follows:

_____ am/pm (Day of Week) - _____ am/pm (Day of Week)

I. ORGANIZATION OWNERSHIP

Ownership type (check box):

- ☐ Truck Driver Training School
- ☐ Political Subdivision (Government Entity)
- ☐ Company
- ☐ Other _____

The following individual(s) are the owner(s), member(s), stockholders (10% or more), officer(s) or partner(s) of the Organization (attach additional names as needed), program director, program coordinator, dean of Political Subdivision or Government Entity:

Name	Title	Driver's License #	Telephone #



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II. NOTICES/COMMUNICATIONS

- A. Notices and Communications required or desired to be given pursuant to this agreement shall be sent to the respective addresses below:

SCDMV
Office of Inspector General
PO Box 1498
Blythewood, SC 29016-0015
(803) 896-9606

Attention: Compliance and Reporting
Email: CDLCompliance@dmv.sc.gov

- B. Third-Party Tester Information:

Company or School Name

Address

City, State, Zip Code

County: _____

Contact Person: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

Notices mailed to the addresses set forth above shall be effective, whether or not actually received, ten (10) days after mailing by first class mail. The postmarked date shall be deemed the date of mailing. The parties agree to notify each other within ten (10) days of any change of address.

Communication Preference: Please choose the method of communication that you prefer SCDMV to use when contacting you. (*Choose only one method*).

☐ I prefer to receive information through the **EMAIL** address listed above.

☐ I prefer to receive information through the **MAIL** at the address listed above.



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III. ENTIRE AGREEMENT

This contract, SC Code §56-1-2080, 49 CFR §383.75, all applicable FMCSRs, and the ***CDL Third-Party Tester's Program Standards*** shall constitute the entire agreement between the SCDMV and the TPT relating to the authority of the TPT and its' Third-Party Test Examiners to administer the Commercial Driver's License skills tests.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated herein.

Third-Party Tester Company Name: _____

Authorized By (Please Print): _____

Authorized Signature

Witnessed By

Date: _____

The South Carolina Department of Motor Vehicles

By: Director of Administration or Designee
Department of Motor Vehicles

Signature of SCDMV Director of Administration or Designee

Witnessed By

Date: _____