



South Carolina Department of Motor Vehicles

CDL Third Party Tester Agreement

DL-404A
(Rev. 11/15)

NOW THEREFORE, the Department and the Third Party Tester (TPT) named herein, in consideration of their mutual duties and responsibilities as set forth in this contract, agree to the following terms and conditions.

PART I

I. THIRD PARTY TESTER AGREES TO:

- A. **Statutes/Regulations:** Comply with all applicable South Carolina statutes. The Third Party Tester further agrees to be bound by the policies and regulations of the Department including those set forth in the **Commercial Driver's License Safety Officer Manual** and Federal Motor Carrier Safety Regulations.
- B. **Indemnification:** Unless the third party tester is a S.C. government entity or a S.C. political subdivision, or an employee thereof, the third party tester agrees to indemnify and hold harmless the Department 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 of this agreement.
- C. **Random Examination/Inspection/Audits:** Allow the Federal Motor Carrier Safety Administration (FMCSA) or its representatives and/or the S.C. Department of Motor Vehicles to conduct random examinations, inspections and audits without prior notice. These inspections may be conducted at least bi-annually or as deemed necessary by the Department. In the event retests are deemed necessary for improper or fraudulent testing, the Third Party Tester agrees to reimburse the Department for cost associated with the retests.

Federal Motor Carrier Safety Regulations (FMCSR's) Part 383.75

(a) Third party tests.

A State may authorize a third party tester to administer the skills tests as specified in subparts G and H of this part, if the following conditions are met:

- (1) The skills tests given by the third party are the same as those that would otherwise be given by the State using the same version of the skills tests, the same written instructions for test applicants, and the same scoring sheets as those prescribed in subparts G and H of this part;
- (2) The State must conduct an on-site inspection of each third party tester at least once every two years **or as deemed necessary by the Department**, with a focus on examiners with irregular results such as unusually high or low pass/fail rates;
- (3) The State must issue the third party tester a CDL skills testing certificate upon the execution of a third party skills testing agreement.
- (4) The State must issue each third party CDL skills test examiner a skills testing certificate upon successful completion of a formal skills test examiner training course prescribed in § 384.228.
- (5) The State must, at least once every two years **or as deemed necessary by the Department**, do one of the following for each third party examiner:
 - (i) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;



South Carolina Department of Motor Vehicles

CDL Third Party Tester Agreement

DL-404A
(Rev. 11/15)

- (ii) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or
- (iii) Re-test a sample of drivers who were examined by the third party to compare pass/fail results;
- (6) The State must take prompt and appropriate remedial action against a third party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third party contract;
- (7) A skills test examiner who is also a skills 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 skills test examiner; and
- (8) The State has an agreement with the third party containing, at a minimum, provisions that:
 - (i) Allow the FMCSA, or its representative, and the State to conduct random examinations, inspections, and audits of its records, facilities, and operations without prior notice;
 - (ii) Require that all third party skills test examiners meet the qualification and training standards of § 384.228;
 - (iii) Allow the State to do any of the following:
 - (A) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;
 - (B) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or
 - (C) Have the State re-test a sample of drivers who were examined by the third party;
 - (iv) Reserve unto the State the right to take prompt and appropriate remedial action against a third party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third party contract;
 - (v) Require the third party tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond.
 - (vi) Require the third party tester to use only CDL skills examiners who have successfully completed a formal CDL skills test examiner training course as prescribed by the State and have been certified by the State as a CDL skills examiner qualified to administer CDL skills tests;
 - (vii) Require the third party tester to use designated road test routes that have been approved by the State;
 - (viii) Require the third party tester to submit a schedule of CDL skills testing appointments to the State no later than seven calendar days prior to each test; and
 - (ix) Require the third party tester to maintain copies of the following records at its principal place of business:



South Carolina Department of Motor Vehicles

CDL Third Party Tester Agreement

DL-404A
(Rev. 11/15)

- (A) A copy of the State certificate authorizing the third party tester to administer a CDL skills testing program for the classes and types of commercial motor vehicles listed;
 - (B) A copy of each third party examiner's State certificate authorizing the third party examiner to administer CDL skills tests for the classes and types of commercial motor vehicles listed;
 - (C) A copy of the current third party agreement;
 - (D) A copy of each completed CDL skills test scoring sheet for the current year and the past **three** calendar years;
 - (E) A copy of the third party tester's State-approved road test route(s); and
 - (F) A copy of each third party examiner's training record.
- (b) **Proof of testing by a third party.**
The third party tester must notify the State driver licensing agency through secure electronic means when a driver applicant passes skills tests administered by the third party tester.
- (c) **Minimum number of tests conducted.**
The State must revoke the skills testing certification of any examiner who does not conduct skills test examinations of at least 10 different applicants per calendar year. Exception: **Examiners who do not meet the 10-test minimum must successfully complete an annual Skills Performance Evaluation performed by a DMV Inspection Agent or other authorized representative of the Department or federal agent.**
- D. Test/Forms:** Only use tests and forms devised and approved by the Department and allow only Safety Officers certified by the Department to administer these tests. These tests shall be the same as would otherwise be administered by the Department.
- E. Sample Test:** Participating Third Party Testers must agree to allow the Department to meet the following oversight requirements of the Federal Motor Carrier Safety Regulation's (FMCSR's):
1. Allow a designated representative of the Department to take the test actually administered by the Third Party Tester, as if the designated individual were a test applicant, as deemed necessary by the Department.
 2. Allow designated representatives of the Department to test a sample of drivers who were examined by the Third Party Tester's Safety Officers and compare pass/fail results. These sample tests will be conducted at least biannually or as deemed necessary by the Department.
 3. Allow Third Party Tester program oversight as set by the Department, as required pursuant to Part 383.75 of the Federal Motor Carrier Safety Regulations.
- F. Administer Skills Tests:** Allow only those Safety Officers who have been licensed by the Department to administer the commercial driver's license skills tests. The Department will maintain a list of all individuals of the Third Party Testers who have been certified by the Department as Safety Officers. In the event of a dispute over which individuals of the Third Party Tester have been certified as a Safety Officer, the Department's list shall control.
- G. License:** Prominently display the Third Party Tester license in their place of business.



South Carolina Department of Motor Vehicles

CDL Third Party Tester Agreement

DL-404A
(Rev. 11/15)

- H. Proof of Testing:** Provide the driver applicants who take and pass the skills tests documented proof, in such form as the Department shall prescribe, so the applicants may provide sufficient evidence to the Department that they have successfully passed the skills and driving tests administered by the Third Party Tester's Safety Officer(s).
- I. Fee Acknowledgement:** Pay fees, as determined by the Department, which is sufficient to defray the actual cost incurred by the Department for administering and evaluating the Driver License testing program and for carrying out any other activities considered necessary by the Department to assure sufficient training for the persons participating in the program. The Department reserves the right to increase these fees as warranted to defray the cost incurred by the Department for conducting training and oversight of the programs participants.
- J. License Suspension:** The Third Party Tester agrees to notify the Department within twenty-four hours of a Safety Officer's conviction of any crime, suspension, cancellation, or revocation of driving privileges.
- K. Cause for Suspension:** The Third Party Tester and Safety Officers are aware that any falsifications under Part 383.75 of the FMCSRs is cause for a sixty (60) day disqualification of commercial driver license pursuant to Section 56-1-2090 (A)(7) of the South Carolina Code of Laws.

II. ADMINISTRATION OF THIRD PARTY TESTER PROGRAM

- A. Program Administration and Oversight:** The Department administers the TPT for the State of South Carolina and monitors organizations and safety officers to ensure compliance with state and federal statutory, regulatory and contractual requirements.
- B. Size and Scope of Program:** The Department has the exclusive authority to determine the size and scope of the TPT, including, but not limited to: the number of organizations in a geographic area; the number of examiners/safety officers authorized for any organization; the number of testing sites in a geographic area; and the scheduling of and enrollment limit of all training programs and seminars.
- C. Department Property:** Safety Officer identification cards, Safety Officer manuals, test certificates and test scoring forms are the property of the Department, and must be returned to the Department immediately upon the cancellation, termination or voiding of the Agreement.
- D. Test/Forms/Manuals and other Materials:** Only use tests and forms devised and approved by the Department and allow only Safety Officers certified by the Department to administer these tests. These tests shall be the same as would otherwise be administered by the Department.

III. TEST ADMINISTRATION

- A. Tests:** The Organization must ensure that each test is administered in strict accordance with the Code, methods, standards, and examination criteria as designed in accordance with the Federal Motor Carrier Safety Regulations and prescribed by the Department.
- B. Testing Site - and Road Course Route Requirements:** The Organization must obtain Department approval of a testing site and associated road course routes



South Carolina Department of Motor Vehicles

CDL Third Party Tester Agreement

DL-404A
(Rev. 11/15)

prior to conducting testing at a location. The Department shall prescribe testing site and road course route requirements.

C. Testing Site Closure: The Department may rescind approval for the organization to conduct testing at a location if the Department determines any of the following apply:

1. The location is no longer needed as a testing site to meet the needs of the TPT Program.
2. The organization is not willing or able to offer testing at the location on the days and times stated in the Department's written approval for the site, or at least 1 day per week if the approval does not state days or times.
3. The organization no longer employs a safety officer examiner authorized to conduct testing of the type for which the site was approved.
4. The testing site or associated road course routes no longer meet testing site or road course route requirements.
5. Failure to maintain compliance with the terms and conditions of the entire contract agreement which consist of this contract and the standards and requirements set forth within the ***CDL Third Party Tester's Safety Officer Manual***.

IV. THE DEPARTMENT OF MOTOR VEHICLES AGREES TO:

A. Testing: Permit the Third Party Tester named in the agreement to administer driver's license skills tests specified in this agreement provided the Third Party Tester adheres to the terms and conditions set forth in this agreement and the ***CDL Third Party Tester's Safety Officer Manual***.

B. Administration and Enforcement: Administer and enforce the provisions of the Commercial Driver's License Third Party Testing Requirements as set forth in SC Code of Law Section 56-1-2080, Part 383.75 and additional applicable Federal Motor Carrier Safety Regulations, this agreement and the CDL Third Party Tester's Safety Officer Manual.

V. TERMINATION OF THIS AGREEMENT

This agreement reserves the right to the Department 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 Safety Officer to conduct skills tests, in the event the Third Party Tester and/or any Safety Officer of the Third Party Tester fails to comply with the terms and conditions of SC Code of Law Section 56-1-2080, Part 383.75 and additional applicable Federal Motor Carrier Safety Regulations, this agreement and the ***CDL Third Party Tester's Safety Officer Manual***.

This agreement expires September 30th. A new Third Party Tester Agreement must be completed September 30th.



South Carolina Department of Motor Vehicles

CDL Third Party Tester Agreement

DL-404A
(Rev. 11/15)

PART II

Pursuant to S.C. Code of Laws Ann. § 56-1-2080, Part 383.75 and additional applicable Federal Motor Carrier Safety Regulations this agreement is entered into BY AND BETWEEN THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES (hereafter referred to as the Department), AND _____

(hereafter referred to as Third Party Tester) located at _____

_____ (Address) and is made effective this _____ day of _____, _____.

This agreement authorizes Safety Officers of Third Party Tester(s) who have been certified by the Department to administer the applicable driver's skills test referenced in § 56-1-2080, part 383.75 and additional applicable regulations of the Federal Motor Carrier Safety Regulations on behalf of the Department and the State of South Carolina. The rights and duties conferred upon the Third Party Tester pursuant to this agreement are not assignable or transferable.

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):

Name	Title	Driver's License #	Telephone #



South Carolina Department of Motor Vehicles

CDL Third Party Tester Agreement

DL-404A
(Rev. 11/15)

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

B. Third Party Tester Information:

Company or School Name

Address

City, State, Zip Code

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 post marked 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.



South Carolina Department of Motor Vehicles CDL Third Party Tester Agreement

DL-404A
(Rev. 11/15)

III. ENTIRE AGREEMENT

This contract, Section 56-1-2080 of the S.C. Code of Law, Part 383.75 and additional applicable Federal Motor Carrier Safety Regulations, and the **CDL Third Party Tester's Safety Officer Manual** shall constitute the entire agreement between the Department and the Third Party Tester relating to the authority of the Third Party Tester and its Safety Officers to administer the Commercial Driver's License skills test.

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

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