

ORGANIZATION REQUIREMENTS

Third party testing organizations are required by the third party testing agreement to adhere to business requirements and standards prescribed by the Michigan Department of State (the Department) in this manual. An organization that fails to do so would be in breach of the agreement, which could result in termination of the agreement.

Variations. A request for variance from any requirement or standard must be submitted to the Department in writing. The request must identify the requirement or standard, a description of the basis for the request, and the organization's proposal for conditions of a variance. Any variance granted by the Department shall be in writing. The Department may rescind the variance at any time by notifying the organization in writing.

SECTION 1: BUSINESS PRACTICES

Third party testing organizations' business practices must comply with requirements and standards prescribed by the Department. These requirements and standards are intended to ensure that third party testing organizations conduct business in a manner reflecting the Department's tradition of customer service and that organizations meet program needs. The designated representative is responsible for ensuring an organization operates its testing operations in compliance with these requirements and standards.

1.1- Customer Service

Established place of business. Each organization shall maintain an established place of business in Michigan. "Established place of business" means a permanent, enclosed building located within this state, open to the public at reasonable times and in compliance with applicable building codes, zoning and other land use regulatory ordinances.

Telephone. Organizations shall maintain a telephone number that is typically answered during regular business hours, unless an organization receives approval from the Department of an alternative business plan. If an organization receives approval for an alternative plan or if an organization is unable to answer its phone during regular business hours, it must have a voicemail system allowing a customer to leave a message. The organization shall ensure that customer inquiries are responded to on the same or next business day unless the organization has notified the Department it is temporarily closed and its voicemail message advises customers of the temporary closing.

Email. Organizations shall maintain an email address that they typically check each business day. Organizations shall report their email address to the department and notify the department if the email address is changed.

Advertising. Organizations may advertise skills testing. Any advertising:

- Shall include the full, actual name of the organization.

- Shall not indicate the organization can issue or guarantee the issuance of a driver's license or indorsement.
- Shall not imply that the organization can influence the Department in the issuance of a driver's license or indorsement.
- Shall not imply that preferential or advantageous treatment from the Department is available through the organization.
- May indicate the organization is "authorized" or "designated" by the Department, but must not contain language that could lead a customer to believe the organization is an official state agency or endorsed by the Department.

Fee and refund policy. All organizations shall submit to the Department a copy of its fee and refund policy. The fee and refund policy shall clearly explain the fees charged for each type of test offered, cancellations, no-shows, improper documents, faulty equipment, vehicle rentals, and any special pricing or discounts. It shall clearly explain the terms for any refunds.

Before accepting any payment or beginning a skills test, the organization shall ensure that each customer has an opportunity to review the fee and refund policy.

Receipts. Organizations shall ensure that each customer receives a receipt upon payment for a driving skills test or a deposit or prepayment for a driving skills test. If a customer makes payment by charge card over the telephone, the organization shall mail a receipt by the next day. If a customer makes payment electronically through the Internet, the electronic process must allow for the customer to print a receipt.

The receipt shall be preprinted and professional in appearance and include the following information.

- The full, actual name of the organization.
- The organization's business address.
- The organization's primary business telephone number and the telephone number used to schedule appointments for the testing site, if different from the primary number.
- The number assigned to the site by the Department.
- The number assigned to the examiner by the Department.
- The customer name.
- The date of the test.
- The type of test conducted (e.g., auto, motorcycle, CDL-A, CDL-B, CDL BPS, etc.)
- Amount and type of payment (e.g., cash, check, charge card).
- Any fee for vehicle rental.

A receipt for a deposit or prepayment shall be accompanied by a copy of the organization's fee and refund policy. If the deposit or prepayment is made by mail, telephone or email, the organization shall ensure the examiner has an additional copy of

the receipt, along with a copy of the fee and refund policy. Both shall be provided to the customer before conducting the skills test or collecting any outstanding payment.

Payments. Payments for skills testing must be made to an organization (an examiner may act as an organization's agent in collecting payments). An organization shall ensure payments made by check or credit card name the organization as payee.

Rental vehicles. An organization shall maintain bodily injury and property damage liability insurance coverage, in the amount of at least \$1,000,000.00, on any vehicle it provides to an applicant. An organization shall not allow an examiner or other employee to provide a vehicle for testing unless it has the same coverage as if it were provided by the organization. An organization shall ensure a vehicle has bodily injury and property damage liability insurance coverage, in the amount of at least \$1,000,000.00 coverage, if another business provides a rental vehicle and that business and the organization have an agreement for the organization to refer applicants to that business to obtain a rental vehicle, or if the organization facilitates a rental agreement between that business and an applicant.

Driver training schools. Organizations that operate driver training schools shall not represent to their driver training school students that the school's status as a third party tester will be an advantage in obtaining a driver's license, CDL or any indorsement.

A contract for driver training services that includes skills testing shall separately disclose the cost of the skills testing and provide that the customer may choose at any time to take skills testing at a different third party tester at his or her own cost. The customer shall not be responsible for fees for skills testing he or she does not take with the school's examiners.

When an organization that also operates a driver training school offers to conduct skills testing of its driver training school students, the organization shall disclose that skills testing is not a part of the training curriculum and that students may take a driving skills test with any authorized testing organization.

1.2- Examiners

Examiner conduct. Organizations should ensure examiners conduct themselves professionally. While each organization is encouraged to set its own standards for examiner conduct that are more comprehensive, each organization is required to ensure examiners meet the following standards.

- Examiners shall look professional in grooming, attire and general appearance.
- Examiners shall not eat, drink or consume tobacco products during any part of a skills test and post testing feedback.
- Examiners shall not consume alcohol within 4 hours before conducting a skills test.
- Examiners shall not use a cell phone during any part of a skills test. A cell phone may be on, but it must be set to not produce an audible ring tone.

- Examiners shall not conduct testing of members of their immediate family, including spouse, parent, sibling, child, aunt, uncle, nephew, niece, cousin, grandmother, grandfather, grandchild, legal ward or legally appointed guardian, and including step- and in-law members of the family.
- Examiners shall not conduct skills testing of an individual to whom they provided any behind-the-wheel instruction.
- Examiners shall not encourage, solicit or accept any gratuity for skills testing or any service related to skills testing.
- Examiners shall issue a receipt upon any payment from a customer.
- Examiners shall not accept a check or credit card payment unless the organization is named as payee.
- Examiners shall conduct each skills test according to the methods and criteria detailed in this manual.

Examiner performance. Organizations shall ensure examiners meet the following performance standards.

- Examiners shall attend and successfully complete all training courses, workshops, seminars, continuing education training or other instructional meetings required by the Department.
- Examiners shall submit to performance reviews as required by the Department.
- Examiners shall be willing and able to regularly conduct skills testing. An examiner is presumed to be willing and able to regularly conduct skills testing if he or she does any one of the following.
 - Conduct 100 automobile skills tests during every 12-month period and conduct at least 4 automobile skills tests each month.
 - Conduct 35 CDL skills tests during every 12-month period and conduct at least 2 CDL skills tests each month.
 - Conduct 150 motorcycle skills tests during any calendar year and conduct 4 motorcycle skills tests each month during the months of April through September.
 - During every 12-month period, conduct any combination of automobile, CDL or motorcycle skills tests exceeding an index of 100, where an automobile skills test has an index value of 1, a CDL skills test has an index value of 3, and a motorcycle skills test has an index value of 0.33.

An examiner shall be excused from the performance standard requiring him or her to conduct a monthly minimum number of tests for up to 3 months if an organization notifies the Department in advance that the examiner will not conduct testing.

1.3- General office practices

Skills test certificates. Organizations shall maintain strict control of skills test certificates. The designated representative shall maintain all unissued certificates at the place of business in a secure location accessible only to the designated representative or owner.

- A designated representative shall not issue partial certificate pads (25 certificates to a pad).
- A designated representative shall not issue certificates to an examiner who has more than an estimated 1 month supply of unused certificates. That estimate shall be based on the examiner's productivity over the most recent monthly reporting period or the designated representative's estimate of the examiner's expected productivity for the next monthly period. The estimate for the next monthly period may be based on projections taking into account the number of tests conducted by the organization during the same period in the previous year, or any other sound business reason.
- A designated representative shall not issue to an examiner more than a 1 month supply of certificates, or more than 1 pad if the examiner's estimated productivity is fewer than 25 tests per month.
- A designated representative shall not issue certificates to an examiner who has not accounted for previously issued certificates.
- A designated representative shall contact Third Party Testing Section immediately if he or she determines one or more skills certificates are lost or cannot be accounted for.

SECTION 2: TEST ADMINISTRATION

Tests. Organizations shall ensure that each test is administered in strict accordance with the methods and criteria detailed in test administration chapters of this manual.

Testing sites and routes. An organization shall ensure the following requirements are met for testing sites and road test routes.

- Testing sites must remain free of traffic, parked vehicles, pedestrians or other hazards during basic control skills testing.
- An organization shall notify the Department of changes in any conditions affecting testing sites. This would include, but not be limited to, changes in traffic patterns at the off-road testing location, construction at the site, or deterioration of pavement or other surface that could affect the outcome of a basic control skills test.
- An organization shall ensure testing sites are maintained in a condition that would not affect the outcome of a basic control skills test. This would include, but not be limited to, snow removal and sweeping of debris.
- An organization shall regularly conduct testing at a testing site. A testing site is presumed to be regularly used if an organization conducts at least 1 test per week at the site.
- Testing sites must be environments free of alcohol, drugs, controlled substances and smoking. They shall not be at locations where the primary business of the property owner or a tenant is selling alcohol or tobacco products, or at a place where alcohol is served in open containers.

- An organization shall notify the Department of changes in any conditions on testing routes. This would include, but not be limited to, changes of traffic conditions, road construction or new traffic signals or signs.
- Testing sites and routes must meet design requirements detailed in this manual.

SECTION 3: STANDARDS FOR OWNERS, EXAMINERS AND DESIGNATED REPRESENTATIVES

3.1- Medical Standards

The organization must ensure examiners are medically qualified to operate the motor vehicles for which they conduct driving skills testing. For each examiner, the organization shall submit to the Department, every 2 years, a physician's certification on a Department-provided form or a copy of the medical examiner's certificate associated with the examiner's CDL.

If an examiner experiences a medical condition disqualifying him or her from being medically qualified to operate a motor vehicle for which he or she conducts driver skills testing, the organization shall notify the Department within 24 hours. The organization shall obtain from the examiner a physician's certification before allowing him or her to conduct skills testing. The organization shall submit a copy of that certification to the Department.

3.2- Criminal History Standards

Each owner, designated representative and examiner must meet criminal history standards prescribed by the Department.

The third party testing agreement with an organization shall be terminated if any owner is, or has been, convicted of:

- Criminal assault in any degree.
- Assault with intent to commit criminal sexual conduct in any degree.
- Attempted criminal sexual conduct in any degree.
- Felonious assault, abuse, cruelty, torture, or indecent exposure.
- Any drug-related conviction.
- A crime for which the use or threat to use physical force is an element.
- A crime for which fraud is an element.
- Any conviction the Department determines could compromise the integrity of the third party testing program.

An organization may not employ or contract with a person to work for the organization as the designated representative or an examiner if that individual is, or has been, convicted of:

- Criminal assault in any degree.
- Assault with intent to commit criminal sexual conduct in any degree.

- Attempted criminal sexual conduct in any degree.
- Felonious assault, abuse, cruelty, torture, or indecent exposure.
- Any drug-related conviction.
- A crime for which the use or threat to use physical force is an element.
- A crime for which fraud is an element.
- Any conviction the Department determines could compromise the integrity of the third party testing program.

3.3- Driving Record Standards

The third party testing agreement with an organization shall be terminated if any owner is convicted of, or has been convicted of within the past 10 years:

- Any violation of section 625 of the Michigan Vehicle Code (MCL 257.625) or an equivalent law in another state or province.
- Operating a motor vehicle causing the death or serious impairment of a body function of another person while one's license is suspended, revoked, denied or one is unlicensed because application for a license has never been made.
- Refusal to submit to a chemical test for bodily alcohol content.
- Manslaughter by motor vehicle.
- Negligent homicide by operation of a motor vehicle.
- Felonious driving.
- A felony in which a motor vehicle was used.
- Reckless driving.
- Fleeing and eluding a police officer or conservation officer.
- Unlawful driving away of a motor vehicle.
- Failure to stop and identify one's self after a personal injury or property damage accident.
- A financial responsibility suspension.
- An unsatisfied judgment conviction.

The third party testing agreement with an organization shall be terminated if, during the past 3 years:

- An owner's driver's license has been suspended, revoked, denied, canceled or disqualified, or subject to any action ordered by the Department or a court. This does not include failure to appear in court or failure to comply with judgment suspensions unless there are more than 2 such suspensions.
- An owner has been convicted or determined responsible for traffic violations in relation to more than 1 motor vehicle accident.
- An owner has 6 or more active points on his or her driving record.

An organization may not employ or contract with a person to work for the organization as the designated representative or an examiner if that individual is convicted of, or has been convicted of within the past 10 years:

- Any violation of section 625 of the Michigan Vehicle Code (MCL 257.625) or an equivalent law in another state or province.

- Operating a motor vehicle causing the death or serious impairment of a body function of another person while one's license is suspended, revoked, denied or one is unlicensed because application for a license has never been made.
- Refusal to submit to a chemical test for bodily alcohol content.
- Manslaughter by motor vehicle.
- Negligent homicide by operation of a motor vehicle.
- Felonious driving.
- A felony in which a motor vehicle was used.
- Reckless driving.
- Fleeing and eluding a police officer or conservation officer.
- Unlawful driving away of a motor vehicle.
- Failure to stop and identify one's self after a personal injury or property damage accident.
- A financial responsibility suspension.
- An unsatisfied judgment conviction.

An organization may not employ or contract with a person to work for the organization as the designated representative or an examiner if, during the past 3 years:

- The person's driver's license has been suspended, revoked, denied, canceled or disqualified, or subject to any action ordered by the Department or a court. This does not include failure to appear in court or failure to comply with judgment suspensions unless there are 2 or more such suspensions.
- The person has been convicted or determined responsible for traffic violations in relation to more than 1 motor vehicle accident.
- The person has 6 or more active points on his or her driving record.

An organization shall not allow a person to operate in the capacity as the designated representative or an examiner for a period of 30 days if:

- The person is convicted of operating a vehicle without proof of insurance.
- The person is convicted of failure to present to a law enforcement officer a proper registration certificate.
- The person is convicted of operating a vehicle without a valid registration plate.
- The person's driver's license is suspended for failure to appear in court or failure to comply with judgment.
- The person is convicted of failure to use a motor vehicle safety belt or failure to wear a motorcycle helmet.

An organization shall notify the Department of the incident and the beginning and ending dates of the 30-day period.

SECTION 4: RECORDS AND REPORTS

4.1- Recordkeeping requirements

Designated representatives are responsible for ensuring their organization maintains third party testing records as prescribed by the Department. Unless otherwise required, records must be maintained for 2 years.

Examiner records. Organizations shall maintain a file for each examiner that includes: name, home address, social security number, a photocopy of the examiner's identification card, most recent medical certification, a receipt or other document showing date of the most recent criminal history report, and a copy of the Examiner Interest Form. The examiner file must be retained 2 years after the examiner leaves the employ of the organization.

Examiner monthly reports. Organizations shall maintain copies of the monthly examiner productivity report for a period of 2 years.

Site records. Organizations shall maintain a file for each testing site that includes:

- If the organization does not own the site, a letter of authorization from the owner. The letter must include a written agreement from the owner that, "It is agreed and understood by all parties that the use of this property as an approved driver skills testing site shall be provided without any discrimination."
- A letter or form from the Department approving the site.
- A diagram or other document that accurately depicts the testing site and position of basic control skills course, including approximate dimensions; traffic entrances and exits, buildings, poles, curbs, signs or other potential hazards shall be marked.
- Copies of all driving test route instructions associated with the site. The instructions must be copies of the actual driving test route instructions approved and signed by a third party analyst.

Site records shall be maintained until the Department rescinds approval for the site or an organization reports to the Department that it no longer uses the site for testing.

Scheduling. Organizations must maintain a test scheduling system that captures and preserves past, present and future test dates and times, and that includes every applicant's full name, driver's license number and telephone number.

Skills testing records. Organizations must maintain a record of each skills test for a period of 2 years. The records shall be maintained using an organized system that allows rapid retrieval of any records by name of the applicant. Each record must include copies of the test scoring form, the skills test certificate issued, and any replacement skills test certificate issued to replace the original along with an explanation, including any documentation, regarding issuance of the replacement.

A record of a CDL skills test must also include copies of both sides of the applicant's photo license or temporary operating permit and the vehicle registration(s) for vehicle(s) used for the test.

Disposal of skills testing records must be in a manner that insures the information on the records cannot be viewed or used by any unauthorized person.

Skills test certificate inventory records. Organizations shall maintain a 3-ring binder documenting all movements of skills certificates. The binder shall be retained for 2 years after an organization stops operating as a third party testing organization. The binder shall be arranged as follows.

- Section 1. Copies of each signed *Material Movement Form*. These forms shall be sorted chronologically with the most recent form first in order.
- Section 2. Each *Examiner Skills Test Certificate Assignment Log* or a similar form reporting certificate inventory assigned to each examiner. These logs shall be sorted by certificate serial number with the highest number first in order.
- Section 3. Each *Applicant Skills Tests Certificate Issuance Log* or a similar form reporting each certificate issued to each applicant. All original, voided certificates shall be attached directly to the corresponding log, with the highest number first in order.
- Section 4. Each *Skills Test Certificate Close-out Log*. The close out logs shall be in chronological order by inspection date with the most recent first in order.

4.2- Records availability

Organizations shall maintain all records at their place of business or at another location approved by the Department. The records are subject to inspection by the Department, or other state or federal officials, at any time during an organization's regular business hours or at any time the business is open. If an organization has not reported its regular business hours to the Department, the records must be made available for inspection at the organization's place of business on a date and time determined by the Department. If the Department contacts the designated representative or owner by telephone, that date and time may be as early as on the next day that the Department conducts business. The Department may also notify an organization in writing, by mail, email or facsimile.

4.3- Reports

An organization's designated representative is responsible for ensuring reports are submitted to the Department and that those reports are accurate.

Examiner monthly reports. The designated representative shall ensure that reports for each month are mailed or otherwise shipped on or before the 10th day of the following month. The reports are presumed to have been shipped on time if received by the Department on or before the 15th day of the month. The monthly report must include a *Third Party Examiner Monthly Skills Tests Summary Report* for each examiner and all original scoring forms for tests conducted during the month.

The following procedures must be followed in submitting the monthly reports.

- The summary reports must signed by the designated representative.

- The summary reports must be submitted together separate from any scoring forms.
- The scoring forms must be sorted by examiner, then test type, and then test date.
- The scoring forms must not contain staples or paper clips.
- The scoring forms must not be folded.
- Badly damaged (wrinkled, torn, stained) forms should be recreated onto a new form with all information matching the original, except that the comments section should include a notice that it was recreated.
- No other correspondence may be submitted in the same package with the monthly reports.
- Any corrected *Third Party Examiner Monthly Skills Tests Summary Report* must be marked as a correction and report the corrected total of all tests conducted by that examiner during the month.

Ancillary reports. The Department may require an organization to submit any other report it determines is needed to manage the third party testing program. These reports may include special reports regarding examiner performance, testing sites, records, business practices, customer complaints or any other subject related to the third party testing program.

Examiner medical status. Organizations must submit a physician certification on a Department-provided form for each examiner at least every 2 years or, if the examiner conducts CDL testing, a copy of the medical examiner's certificate associated with the examiner's CDL must be submitted annually. Organizations must notify the Department within 24 hours if they learn an examiner does not meet medical standards.

Examiner criminal history. Organizations must require each owner, designated representative and examiner to complete both a state and federal bureau of investigation fingerprint based criminal history through the Michigan Department of State Police every 5 years. Organizations must submit to the Department proof of compliance. Organizations must notify the Department within 24 hours if they learn an examiner does not meet criminal record standards.

CDL test scheduling reports. On Friday of each week, organizations must submit to their TPT analyst a report of CDL skills tests scheduled for the upcoming week. E-mail is preferred, but faxes are acceptable. The report must show appointments for the upcoming week, including, for each scheduled test: applicant's name and driver's license number; date and time of the test; type of test; testing site; and examiner name or number.

AGREEMENT
between the
MICHIGAN DEPARTMENT OF STATE
and a
THIRD PARTY TESTING ORGANIZATION

This agreement (Agreement) between the Michigan Department of State (the Department) and [NAME OF ORGANIZATION] (the Organization), [ADDRESS], authorizes the Organization to administer driving skills tests on behalf of the Department.

ORGANIZATION OWNERSHIP

Ownership type: Individual Partnership Corporation LLC
 Municipal corporation Public transportation corporation
 Other (describe):

The following individual(s) are the owner(s), member(s), stockholders, officer(s) or partner(s) of the Organization (attach additional names as needed):

Name:
Title:
Driver's License Number:
Telephone:

**THIS DOCUMENT IS FOR REVIEW ONLY.
THIS IS NOT AN OFFER TO ENTER INTO
AN AGREEMENT WITH THE MICHIGAN
DEPARTMENT OF STATE**

Name:
Title:
Driver's License Number:
Telephone:

Name:
Title:
Driver's License Number:
Telephone:

Name:
Title:
Driver's License Number:
Telephone:

**THIS DOCUMENT IS FOR REVIEW ONLY. THIS IS NOT AN OFFER TO ENTER
INTO AN AGREEMENT WITH THE MICHIGAN DEPARTMENT OF STATE**

PART I: THIRD PARTY TESTING PROGRAM PURPOSE AND DEFINITIONS

ARTICLE 1 - DEFINITIONS

The following words and terms, when used in this Agreement, mean:

- 1.01 **Applicant.** A person who needs to successfully complete a driving skills test to obtain a driver's license or indorsement, including a person who seeks a driving skills test, takes a driving skills test, or has taken a driving skills test.
- 1.02 **Code.** The Michigan Vehicle Code, 1949 PA 300, as amended; MCL 257.1 *et seq.*
- 1.03 **Department.** The Michigan Department of State.
- 1.04 **Designated representative.** The individual designated by the Organization to administer the Organization's third party testing operations and ensure the Organization and its examiners comply with this Agreement, the Code and other TPTP requirements. The person must be an officer, owner, partner or employee of the Organization.
- 1.05 **Examiner.** An individual, employed by or under the direction or control of the Organization who is designated by the Department to administer tests.
- 1.06 **Examiner identification card.** An identification card issued by the Department indicating that the examiner is authorized to administer tests and that he or she has been designated by the Department as an examiner.
- 1.07 **Organization.** The public or private business or agency named in this Agreement that is authorized by the Department to administer driving skills tests in accordance with this Agreement.
- 1.08 **Owner.** Each individual, partner, or shareholder having a 25% or more ownership interest in the Organization or, for a non-profit corporation, each officer, director, administrator or board member.
- 1.09 **Test.** A driving skills test required by the Code. Depending on the context, it may be an on-the-road test or an off-road test.
- 1.10 **Third Party Testing Program (TPTP).** The program, authorized by the Michigan Vehicle Code, in which the Department enters into agreements with corporations or agencies to administer driving skills tests required by the Code as part of the driver's license testing process.

The Department may define other words and terms in manuals and other materials prepared by the Department and provided to the Organization.

ARTICLE 2 - PURPOSE

- 2.01 **TPTP Purpose.** The purpose of the TPTP is ensure that:
 - (a) Every applicant has reasonable access to testing in terms of waiting time and driving distance, and at a competitive fee.

- (b) Every applicant is tested by an examiner designated by the Department and employed or directed by an authorized organization.
- (c) Every applicant is administered the Department's standard test conducted in a manner consistent with the Department's methods and examination criteria.

ARTICLE 3 - ADMINISTRATION

- 3.01 **Program administration and oversight.** The Department administers the TPTP for the State of Michigan and monitors organizations and examiners to ensure compliance with statutory and contractual requirements.
- 3.02 **Size and scope of program.** The Department has the exclusive authority to determine the size and scope of the TPTP, including, but not limited to: the number of organizations in a geographic area; the number of examiners 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.
- 3.03 **Department property.** Examiner identification cards, examiner 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.
- 3.04 **Manuals and other materials.** The Department shall provide manuals and other materials that prescribe TPTP requirements for organizations, owners, designated representatives and examiners, including, but not limited to: skills testing criteria and methods; testing site and road routes; standards for organizations, owners, designated representatives and examiners; business practices related to the TPTP; recordkeeping, reporting and inspections; and other matters pertinent to the TPTP. The manuals and other materials will be in a format prescribed by the Department and may be updated or superseded, as needed.

PART II: ORGANIZATION REQUIREMENTS

ARTICLE 4- BUSINESS PRACTICES

- 4.01 **Organization business requirements.** The Organization must ensure its business practices comply with requirements and standards prescribed by the Department.

ARTICLE 5- SURETY BOND REQUIREMENTS

- 5.01 **Surety bond.** The Organization must provide to the Department and maintain a surety performance bond for the amounts and purposes described in this Article. The surety bond must be written by a company authorized to do business in Michigan, and must be on a form approved by the Department. The aggregate liability of the surety for breaches of the bond must not exceed the principal sum of the bond for the occurrences in each calendar year. The surety company may cancel a bond after giving 30 days written notice to the Department and will not be liable for a breach of the bond that occurs after the effective date of cancellation. However, the surety company must remain liable for a breach that occurs before the effective date of cancellation, if the breach is discovered

within 3 years after the effective date of cancellation. The Organization must replace any canceled surety bond and notify the Department of the replacement.

The Organization must provide a surety performance bond, in the principal sum of \$5,000.00 per examiner. The bond shall provide for reimbursement to the Department for costs associated with the re-testing of any individual who is administered a test not conducted according to the method and criteria prescribed by the Department. The bond shall also provide for a refund to any individual who is not tested according to the method and criteria prescribed by the Department, or does not receive a test after paying a deposit.

ARTICLE 6 - INSURANCE

- 6.01 **Insurance Code of 1956.** A vehicle used by an applicant to take a test must be insured as prescribed by the Insurance Code of 1956 (1956 PA 218, MCL 500.10 *et seq.*)
- 6.02 **Liability coverage.** The Organization must maintain bodily injury and property damage liability insurance coverage on any vehicle it provides to an applicant. The amount of insurance coverage must be not less than \$1,000,000.00 for bodily injury to, or the death of, 1 or more persons in any 1 accident, and not less than \$100,000.00 for damage to, or destruction of, the property of others in any 1 accident. If a vehicle used by an applicant is owned by an Organization employee, or an individual or business referred by, or associated with, the Organization, it must have the same coverage as if it were an Organization-owned vehicle.
- 6.03 **No exclusions for TPTP.** The insurance coverage on a vehicle provided by the Organization must not exclude from coverage any of the following:
- (a) A person taking a test administered by the Organization.
 - (b) A person who suffers bodily injury or sustains property damage as a result of a test conducted by the Organization.
 - (c) A person employed by the Organization to conduct testing.
- 6.04 **Business liability coverage.** The Organization must maintain general business liability insurance in the amount of at least \$1,000,000.00.
- 6.05 **Proof of insurance.** The Organization must provide to the Department certificates of insurance verifying insurance coverages required in this Article. All certificates are to be prepared by the insurance provider. All certificates must list the Department as certificate holder and contain a provision indicating the coverages afforded under the policies shall not be cancelled or materially changed without 30 days prior written notice to the Department.

PART III: REQUIREMENTS FOR INDIVIDUALS - OWNERS, EXAMINERS AND DESIGNATED REPRESENTATIVES

ARTICLE 7 - REQUIREMENTS FOR ORGANIZATION OWNERS, EXAMINERS AND DESIGNATED REPRESENTATIVES

- 7.01 **Physician's certification.** Each examiner must provide a satisfactory physician's certification pursuant to medical standards prescribed by the Department.
- 7.02 **Criminal history.** Each owner, designated representative and examiner must meet standards prescribed by the Department. Before approval as a designated representative or examiner, an individual must complete both a state and federal bureau of investigation fingerprint-based criminal history check through the Michigan Department of State Police. That history check must be repeated every 5 years after the initial approval.
- 7.03 **Driving record.** Each owner, designated representative and examiner must be competent to safely operate a motor vehicle, as determined by the Department through a review of driving records. The Department may prescribe driving record standards.

PART IV: ADMINISTRATION OF TESTS

ARTICLE 8 – TEST ADMINISTRATION

- 8.01 **Tests.** The Organization must ensure that each test is administered in strict accordance with the Code and the methods and examination criteria prescribed by the Department.

ARTICLE 9 - TESTING SITES AND ROAD COURSE ROUTES

- 9.01 **Testing site and road course route requirements.** The Organization must obtain Department approval of a testing site and associated road course routes prior to conducting testing at a location. The Department shall prescribe testing site and road course route requirements.
- 9.02 **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:
- (a) The location is no longer needed as a testing site to meet the needs of the TPTP.
 - (b) 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.
 - (c) The organization no longer employs an examiner authorized to conduct testing of the type for which the site was approved.
 - (d) The testing site or associated road course routes no longer meet testing site or road course route requirements.

PART V: INSPECTIONS, RECORDS AND REPORTS

ARTICLE 10 – EXAMINATIONS, INSPECTIONS AND AUDITS

- 10.01 **State and federal agencies.** The Organization and its examiners are subject to examinations, inspections and audits by the Department and the Federal Motor Carrier Safety Administration or their representatives. Examinations, inspections and audits may be made with or without prior notice to the Organization. The examinations, inspections and audits may be accomplished through any reasonable means.

- 10.02 **Examiner review.** State employees may take the tests actually administered by the third party as if the State employee were a test applicant. The State may test a sample of drivers who were examined by the third party to compare pass/fail results.
- 10.03 **CDL on-site inspections and examiner reviews.** At least annually, the Department shall conduct an on-site inspection of each third party organization authorized to administer CDL testing. At least annually, State employees shall take the tests actually administered by each third party authorized to administer CDL tests as if the State employee were an applicant. The Department may require the Organization to provide a commercial vehicle for this purpose.

ARTICLE 11 - ORGANIZATION RECORDS

- 11.01 **Record keeping requirements.** The Organization shall maintain records in accordance with requirements prescribed by the Department.
- 11.02 **Records availability.** The Organization shall maintain required records at its place of business or at another location approved by the Department. The Department may prescribe requirements for the availability of Organization records.
- 11.03 **Reports.** The Organization shall submit reports as required by the Department. The Department may prescribe the format and procedure for the submission of any report or document. That format may be written, electronic or any other format named by the Department.

PART VI: REMEDIES FOR BREACH OF AGREEMENT

ARTICLE 12 - REMEDIES FOR BREACH OF AGREEMENT

- 12.01 **Termination of Agreement.** If the Department determines that the Organization has failed to comply with any requirement of this Agreement, including acts or omissions of an examiner, designated representative or owner, the Department may immediately terminate this Agreement, or take other action prescribed by this Agreement.
- 12.02 **Notice to Organization.** The Department shall provide written notice of the termination of this Agreement, or other action taken, to the Organization's designated representative.
- 12.03 **Termination events.** The Department may terminate this Agreement or an examiner designation if it determines that any of following events occurred:
- (a) The Organization or an examiner failed to comply with any provision of this Agreement.
 - (b) The Organization, designated representative, or an examiner falsified any record or information relating to the TPTP.
 - (c) The Organization, designated representative, or an examiner made a false statement or an intentional misrepresentation of any material fact.
 - (d) An owner, designated representative, or examiner committed an act that compromises the integrity of the TPTP.

- (e) The Organization failed to maintain required insurance or surety bond coverage.
- (f) The Organization ceases offering testing to the public.
- (g) Dissolution of the corporation, limited liability company, or other entity named in the Agreement as the Organization.
- (h) The Organization failed to maintain a place of business in the State of Michigan, as defined by the Department.
- (i) The Organization violated a state, federal or local law, including, but not limited to, zoning ordinances and the Elliott Larsen Civil Rights Act (1976 PA 453, MCL 37.2101 *et seq.*)
- (j) The Organization failed to ensure that its examiners administer each test in strict accordance with the Code and the methods and examination criteria prescribed by the Department.
- (k) The Organization failed to comply with any provision of the Agreement or requirements and standards prescribed by the Department.
- (l) The Organization failed to ensure each examiner complied with medical standards prescribed by the Department.
- (m) The Organization failed to ensure each owner, designated representative and examiner complied with criminal history standards prescribed by the Department.
- (n) The Organization failed to ensure each owner, designated representative and examiner complied with driving record standards prescribed by the Department.

12.04 **Unfair labor practices.** Under MCL 423.323, the State of Michigan cannot award a contract or subcontract to an employer whose name appears in the current register, compiled under MCL 423.322, of employers who have failed to correct unfair labor practices. Under MCL 423.324, the State of Michigan may void this Agreement if, subsequent to award, the name of the Organization, or the name of a subcontractor, manufacturer or supplier of the Organization appears in that register.

12.05 **Civil rights for disabled persons.** The Persons with Disabilities Civil Rights Act (1976 PA 220, MCL 37.1101 *et seq.*) mandates that the Organization and any of its subcontractors shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a disability that is unrelated to the individual's ability to perform the duties of a particular job or position. The Department may immediately terminate the Agreement if the Organization or any of its subcontractors violates the Persons with Disabilities Civil Rights Act.

12.06 **Alternative actions.** After examining all documents, records, statements and information made available to the Department and conferring with an owner or designated representative, the Department may choose to take other action as an alternative to termination of this Agreement.

ARTICLE 13 - EXHAUSTION OF REMEDIES REQUIREMENT

13.01 **Administrative review.**

- (a) If the Organization believes it is aggrieved by any decision, action or inaction of the Department concerning a matter covered by this Agreement, it must petition the Department for an administrative review before taking any other legal action.
- (b) The petition for an administrative review must be in writing and must include a reasonably detailed description of the basis of the requested review. It must be submitted to "Michigan Department of State, Bureau of Regulatory Services, Lansing, Michigan 48918" within 14 calendar days after the notice to the Organization. If the matter does not involve a notice by the Department, the petition must be submitted within 14 calendar days after the Organization becomes aware of the action or inaction that is the subject of the review.
- (c) The administrative review shall consist of an informal conference.

13.02 **Informal conference.**

- (a) The Department shall schedule an informal conference within 30 calendar days after receiving a petition for administrative review.
- (b) The informal conference shall focus on documents maintained by the Department's Driver Programs Division. The Organization may appear and present documents and arguments, and may be represented by an attorney.
- (c) The Department shall provide the Organization with a written decision regarding the issues considered at the informal conference within 45 calendar days after the date of the conference. However, the Department may extend that time to obtain further information or for another reasonable business purpose.

PART VII: COMMUNICATIONS, RELATIONSHIP, AMENDMENTS AND TERM OF AGREEMENT

ARTICLE 14 - INDEMNIFICATION

- 14.01 **Indemnification.** The Organization shall indemnify the State of Michigan, the Department, and all of their officers, employees, and agents for any liability, including but not limited to attorney fees, attributable to any act or failure to act of the Organization or the Organization's owner(s), designated representative, examiner(s), employee(s) or agent(s) under this Agreement.

ARTICLE 15 - NOTIFICATION REQUIREMENTS

- 15.01 The Organization must:

- (a) Notify the Department in writing before making any change in the Organization's name, address, designated representative, ownership, testing location, off-road basic control skills course or driving routes. Any proposed change must be approved in writing by the Department before the Organization implements it.
- (b) Notify the Department in writing within 24 hours after any of the following occur.

- (i) Any change in the employment of any person authorized by the Department to be an examiner or designated representative for the Organization or any change in the availability of testing services offered by the Organization.
- (ii) The Organization ceases third party testing operations in Michigan. The notification must include information required in article 18.03.
- (iii) A change of medical condition, driving record, or criminal record that may disqualify an owner, designated representative or examiner from meeting standards prescribed by the Department.
- (iv) The Organization receives notice of a complaint about test administration.
- (v) An accident that is reportable under the Code occurs during the administration of a test.

ARTICLE 16 - COMMUNICATIONS

16.01 Any notice to the Department required by this Agreement must be in writing and sent by commercial delivery or first class U.S. mail. Unless one party notifies the other in writing of a different mailing address, notices to the Organization and the Department must be sent to the addresses listed below.

- (a) The giving of notice by mail is complete upon the expiration of 5 days after it is mailed.
- (b) The following individual is the Organization's designated representative, with full authority to administer its third party testing operations and to give and receive any written notices and communications under this Agreement.

DESIGNATED REPRESENTATIVE NAME

DRIVER'S LICENSE NUMBER

ORGANIZATION MAILING ADDRESS

E-MAIL ADDRESS

PHONE NUMBER

FAX NUMBER

(c) The following individual, or his successor or designee is the Department's representative to receive any written notices and communications under this Agreement:

Kirk Ferris, Director
Driver Programs Division
Bureau of Regulatory Services
Michigan Department of State

Lansing, MI 48918

ARTICLE 17 - RELATIONSHIP OF THE DEPARTMENT AND THE ORGANIZATION

17.01 **Independent contractor.**

- (a) The Organization is an independent contractor, and is not an employee, agent, or partner of the Department.
- (b) There is no employee-employer, agency or partnership relationship between the Department and the Organization's owner(s), designated representative, examiner(s) or any of its employees. Those persons are not agents, employees, or representatives of the Department or the State of Michigan.
- (c) The Organization is completely responsible for its acts and omissions, and those of its agents, employees, owner(s), designative representative, and examiner(s) under this Agreement.

ARTICLE 18 – EFFECTIVE DATE AND TERM OF AGREEMENT AND NON-ASSIGNABILITY

18.01 This Agreement is effective on the date it is signed by the Department's representative. It replaces any prior Agreement, written or verbal, between the parties. This Agreement shall remain in full force and effect until it is voided, terminated, canceled or amended. The Agreement shall be terminated upon written notice by either party.

18.02 This Agreement and the Organization's authority to conduct testing are not assignable by the Organization, either in whole or in part.

18.03 Within 10 days after voiding, termination or cancellation of the Agreement, the Organization must:

- (a) Provide the Department with detailed information about its plan for retention of records.
- (b) Deliver Department property, including test certificates and examiner identification cards, to the Department.
- (c) Arrange with the Department for inspection of the Organization's records. The Department may require the Organization to deliver those records to a location designated by the Department for inspection.

ARTICLE 19 - AMENDMENTS AND ENTIRE AGREEMENT

19.01 **Amendments.** The Organization and the Department may amend this Agreement only by a written document signed by both parties. A proper amendment will be incorporated into this Agreement by reference. No verbal representation, interpretation, or commitment by any officer, agent, representative, or employee of either party, before or after the effective date of this Agreement, will affect or modify any of the provisions in this Agreement.

19.02 **Manuals and other materials.** Procedures, requirements and standards prescribed in manuals or other materials provided by the Department supplement this Agreement. Any

violation of those procedures, requirements and standards is a violation of this Agreement.

19.03 **Entire Agreement.** This Agreement contains the entire understanding between the parties concerning the TPTP.

ARTICLE 20 – WAIVERS AND SEVERABILITY

20.01 **Waivers.**

- (a) A waiver by either party of any provision of this Agreement shall not waive any other provision.
- (b) A waiver of a breach of any provision of this Agreement shall not do either of the following:
 - (i) Waive a further breach of the same provision.
 - (ii) Waive a breach of any other provision.

20.02 **Severability.** Each provision of this Agreement must be interpreted in a way that is valid under applicable law. If any provision is held invalid, the rest of the Agreement shall remain in full effect.

ARTICLE 21 - APPLICATION OF LAW

21.01 **Application of law.** This Agreement shall be governed and interpreted by Michigan law.

ORGANIZATION: The person signing this Agreement must have the authority to do so and to bind the Organization.

SIGNATURE: _____
NAME and TITLE: _____
(Printed) _____
DATE: _____
(Printed) _____

**THIS DOCUMENT IS FOR REVIEW ONLY.
THIS IS NOT AN OFFER TO ENTER INTO
AN AGREEMENT WITH THE MICHIGAN
DEPARTMENT OF STATE**

MICHIGAN DEPARTMENT OF STATE

SIGNATURE: _____
NAME and TITLE: Kirk Ferris, Director
Driver Programs Division
DATE: _____
(Printed) _____