

AGREEMENT

between the

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

and

Name of Contractor (Third Party Administrator)

THIS AGREEMENT is made effective this _____ day of _____, 20 ____ , BY AND BETWEEN the **FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, DIVISION OF MOTORIST SERVICES**, (hereinafter the “Department”)AND _____, (hereinafter the “Contractor”) located at _____(Contractor address).

WITNESSETH

WHEREAS, the Contractor seeks to operate a Third Party Driver License Testing Service for the purpose of administering Class E Knowledge exams to the public; and

WHEREAS, section 322.56, F.S., provides authority for the Department to contract with third party entities to administer Class E knowledge tests; and

WHEREAS, section 322.56, F.S., also provides that the Department is authorized to adopt regulations necessary to implement the law,

NOW THEREFORE, the Department and the Contractor, in consideration of the duties and responsibilities set forth herein, mutually agree as follows:

SECTION I. GENERAL

1. A contractor must be under agreement with the Department prior to engaging in any driver license testing. Acceptance of the terms and conditions of this agreement shall allow the contractor to be authorized pursuant to section 322.56, F.S.
2. Chapter 322, F.S., is incorporated by reference into this agreement and each contractor must meet any and all applicable provisions of that Chapter and this agreement.
3. The contractor shall not conduct business as a third party driver license testing service on a terminated agreement.
4. The authority to operate a third party driver license testing service under this agreement is not transferable.

SECTION II. DEFINITIONS.

For the purposes of this agreement, the following words and phrases shall have the meaning indicated:

1. **Applicant** - An individual who intends to apply for an original non-commercial Florida Driver License (Learner's or Class E), and who will therefore be required to pass the applicable knowledge and/or driving skills tests.
2. **Class E License** - In Florida's classified licensing system, the non-commercial license type required to drive standard passenger vehicles and light trucks.
3. **Contractor** - An entity or individual, authorized as a third party administrator and holds a valid third party driver license testing agreement issued by the Department pursuant to section 322.56, F.S., for the purpose of engaging in driver license testing.
4. **Contract Manager** - For purposes of this agreement, the Program Manager of Driver Compliance at the Department of Highway Safety and Motor Vehicles. For purposes of the application, the person authorized to manage this agreement.
5. **Contract number** - An assigned number that shall identify the Third Party Administrator or contractor where applicable in program documents and information systems.
6. **Corporate officers** - People with day-to-day responsibility for running the corporation. A corporate officer is a high-level management official of a corporation or an unincorporated business, hired by the board of directors of a corporation or the owner of a business, such as a President, Vice President, Secretary, Chief Financial Officer or Chief Executive Officer. Such officers have the actual or apparent authority to contract or otherwise act on behalf of the corporation or business.
7. **Department** - The Florida Department of Highway Safety and Motor Vehicles, Division of Motorist Services.
8. **Driver License Testing** - Any activity for compensation related to proctored classroom, proctored on-line, or proctored behind the wheel driver license testing for Class E knowledge.
9. **Employee** - A person who is employed by a Third Party Administrator and receives annually an Internal Revenue Service Form W-2, or an independent contractor who has a written contract with the Third Party Administrator and receives annually an Internal Revenue Service Form 1099.
10. **Immediate family member** - A person's spouse, parents, brothers, sisters and children, and parents, brothers, sisters and children of the spouse.
11. **On-line exam** - A Class E Knowledge exam consisting of Road Rules and Road Signs questions administered through an approved Internet testing website by an authorized third party administrator.
12. **Proctored exam** - A Class E Knowledge exam consisting of Road Rules and Road Signs questions administered in a classroom and monitored by a person employed by an authorized third party administrator to monitor and ensure test integrity over students during examinations.
13. **Student** - A person who receives driver license testing services from a contractor.

14. **Student data** – information on the student consisting of: full name, date of birth, gender, full social security number, alien registration number, admissions number, Florida identification number, and all parent or guardian attestation statements.
15. **Test Proctor** – A person employed by a Third Party Administrator to monitor and ensure test integrity over students during the classroom administration of Class E Knowledge exams.
16. **Test site** - Any of the physical or virtual location at which the Third Party Administrator is authorized to conduct driver license testing.
17. **Third Party Administrator** - A business, government entity, or public or private secondary school certified by the Department as authorized to conduct Florida driver license knowledge and/or skills testing on behalf of the Division of Motorist Services to driver license applicants in accordance with the requirements described herein. A business entity, defined as a Third Party Administrator, must be authorized by the Department and accept responsibility for the performance of all of its subdivisions conducting test activities under this agreement.
18. **Third Party Tester** - An individual who is a payroll or contract employee of a Third Party Administrator and who is authorized to conduct driver license tests in accordance with the terms of this agreement.

SECTION III. APPLICATION

1. Prior to entering into this agreement, the contractor must submit to the Department a completed application on form HSMV 77067, including all required documentation.
2. The contractor must have a finger-print based background check performed on every sole proprietor, general partner in the case of a partnership, corporate officer, test proctor or administrator affiliated with the contractor's third party driver license testing service via a Live Scan Provider. When a contractor hires subsequent test proctors or administrators, adds or replaces corporate officers, if a new partner is added or sole proprietorship changes, those persons must undergo the same fingerprint based background check. In addition, the contractor must notify the Department in writing on letterhead of the decision to hire subsequent test proctors or administrators, or to add or replace corporate officers, if a new partner is added or sole proprietorship changes, and provide a copy of the receipt of a finger-print based background check.
3. Any person convicted of a crime involving any drug or DUI related offense in the past five (5) years, any felony, the commission of fraud, or a crime directly related to the personal safety of a student, is not allowed to conduct third party driver license testing services.
4. The contractor is required to notify the Department of any subsequent offenses committed by a sole proprietor, general partner in the case of a partnership, corporate officer, test proctor or administrator within 72 hours of knowledge of an arrest. The notification must include the nature of the charge, the name of the arresting agency, and a copy of the arrest warrant and/or the law enforcement report.
5. An application for authorization may be denied by the Department for the reasons set forth in Section VIII of this agreement.
6. The contractor must submit a new application with all necessary supporting documents within ten (10) days prior to any change to the business name, sole proprietor or business model.

7. The Department shall notify the contractor upon receiving an unsatisfactory background check on any actual or proposed sole proprietor, partner in the case of a partnership, corporate officer, test proctor, or administrator. The contractor shall then have ten (10) business days to remove or replace the sole proprietor, partner in the case of a partnership, corporate office, test proctor or administrator.

SECTION IV. CONTRACT VALIDITY

1. The contractor may be authorized by submitting form HSMV 77067, Application for Authority to Conduct Third Party Driver License Testing, including all required documentation to the Department. If the Department determines that the contractor is eligible for authorization, the authorization shall be valid for the contract period of three (3) years or until termination of this agreement by the Department as provided in Section VIII of this agreement.
2. This agreement shall be valid for three (3) years from the effective date. A new application and agreement are required.

SECTION V. GENERAL REQUIREMENTS FOR CONTRACTORS

1. No employee of the Department or immediate family member of a Department employee shall be connected in any capacity with any contractor in accordance with Section 112.313(7), F.S.
2. A contractor shall not indicate that its service is in any way endorsed by the Department, except to say that it is “authorized.”
3. A contractor shall not utilize advertising that indicates, in any way, that the contractor can issue or guarantee the issuance of a driver license or imply that the contractor can in any way influence the Department in the issuance of a driver license, or imply preferential or advantageous treatment from the Department can be obtained.
4. A contractor shall not use any name in its advertising besides the name on its application and shall not use the word “state” in any part of its name.
5. The contractor shall sufficiently administer the test to its students to better enable students to safely operate a motor vehicle. The Department may require performance evaluations of a contractor, if the Department determines the contractor’s driver license testing does not meet this standard.
6. A contractor shall not conduct any license testing or solicitation at any driver license office, whether owned or leased, including the driving range and parking areas adjoining the driver license office.
7. The contractor agrees to pay the Department for each retest issued to any student in accordance with Chapter 322, F.S.
8. The contractor must agree to allow the Department to use a state contracted vendor to automatically debit the contractor’s bank account for the payment of retest fees.
9. The contractor must submit one (1) banking account number to the Department for the purposes of automatic debiting for the payment of transaction fees.
10. The contractor must agree to pay to the Department all fees associated with the set-up of automatic debiting through the state contracted vendor, if applicable.

11. The contractor must limit credit card transactions to three (3) exam transactions from the same credit card number in a 24 hour period.
12. The contractor must ensure that funds to cover all retest fees for license retesting is available within 24 hours of obtaining the retest exam or be disqualified from issuing driver license tests until balance is paid in full.
13. The contractor must inform each student of the purpose and complete use of the full social security number being collected in accordance with Chapter 119.071(5), F.S., by stating that section 322.08(2)(a) F.S. requires each applicant to provide his or her social security number for the purpose of applicant identification and verification with the Federal Social Security Administration and as a requirement of the Federal Real ID Act of 2005.

SECTION VI. CONTRACTOR OFFICES AND INSTRUCTION FACILITIES

1. A contractor administering proctored exams must establish and maintain a principal place of business in the State of Florida. A contractor must establish and maintain a permanent mailing address. Any changes to the contractor's principle place of business or mailing address must be submitted to the Department's Contract Manger within ten (10) days of the change.
2. A contractor administering on-line exams must be registered with Florida Department of State, Division of Corporations and must provide a current Certificate of Fictitious Name and/or Certificate of Incorporation at the time of application.
3. A contractor administering proctored exams shall ensure that its classroom is safe and meets all requirements of state and federal law and local ordinances.
4. No contractor facility shall be established within 300 feet of any driver license office.
5. A contractor must permit the Department to inspect its testing facilities, servers or data on servers without notice. A contractor must permit the Department to inspect its classrooms, offices, vehicles, and records at the discretion of the Department.

SECTION VII. TESTING

The contractor is only authorized to store exam questions and answers associated with the student to whom the questions were administered. If examinations are administered on paper, the contractor may only retain those printed exams that have been completed and signed by students. All other printed paper examinations must be destroyed (shredded or burned). The prohibitions on storing, banking, and revealing test questions only apply to the Department's library of knowledge test questions issued through the Department's Driver License Testing Web Service. Nothing in this Agreement shall be construed to prohibit the Contractor from storing, banking or utilizing test questions other than the Department's questions including test questions developed independently of the Department's library of knowledge test questions for use as practice test questions or for use in states other than Florida.

1. The contractor must use the Department's Driver License Testing Web Service for all Class E license testing activity, including requesting test questions and submitting test results. In the event that the Department obtains a new testing system, the contractor agrees to use the new testing system within 90 days of availability.

2. The contractor must notify any student in the event of system failure, scheduled maintenance, or any other planned outages by the Department. The message must indicate that the testing system is temporarily unavailable. The Department will notify the contractor five (5) days prior to scheduled maintenance or any other planned outages.
3. The contractor may not use any other form of Class E license test questions.
4. Each student must be administered the unique randomly generated exam provided electronically by the Department through the Driver License Testing Web Service.
5. Prior to administering any exam, the contractor must submit the students identification information by obtaining the following:
 - Full name
 - Date of Birth
 - Gender
 - Full social security number

If the student has not been issued a social security number, then one (1) of the following must be submitted:

- Alien registration number
 - Admissions number
 - Florida ID card number
6. If the student is randomly selected for retesting of the Road Signs or Road Rules tests in the driver license or tax collector office and the student fails the initial test given in that office, the contractor may voluntarily refund to the student the testing price received by the contractor.
 7. A contractor may retest any student who has failed a retest issued in a driver license or tax collector's office.
 8. Prior to the exam, the contractor must notify the student and parent or guardian that the student may be selected for retesting at the driver license or tax collector office. The statement must appear exactly as follows: "All students are subject to random selection for retesting at the driver license or tax collector office prior to the issuance of any license. Failure to pass the random retest will require the student to pass the knowledge test in a driver license or tax collector office prior to license issuance."
 9. The Department agrees to issue one (1) set of exam questions for each student, with the exception of retesting. The contractor must submit all completed exam answers back to the Department for grading within 48 hours of requesting the exam. Failure on the part of the contractor to submit the exam answers within 48 hours will result in a status of "terminated" and subsequent exam requests will require the collection of a retest fee from the contractor.
 10. The contractor must ensure that the student's personal information and the parent or guardian's personal information and financial information is stored in a secure environment and is not accessible by anyone other than the contractor and the Department.

11. KNOWLEDGE TESTING

A. Proctored Road Rules and Road Signs

1. The contractor must provide an indoor area suitable for students to complete multiple choice tests, computer(s), printer(s), and Internet connectivity meeting specifications for Department-supplied testing software or Department approved paper tests.
2. The contractor must ensure that the testing area is free from distractions or interference that would affect the testing ability of any student.
3. The contractor must maintain the capability to accommodate applicants needing special services in accordance with requirements of the Florida Americans With Disabilities Accessibility Implementation Act, Sections 553.501 - 553.513, Florida Statutes, and the current Florida Disability Code for Building Construction, providing requirements for persons with disabilities and with the requirements of Public Law 101-336, enacted July 26, 1990, effective January 26, 1992, Section 28 CFR Part 35 and Appendix to Section 36 CFR Part 1191, 42 USCS s.12101 et seq., known as the "Americans with Disabilities Act of 1990."
4. Knowledge testing must be conducted in the same manner as those tests given by driver license examiners.
5. The contractor must ensure a student to test proctor ratio of no more than 25:1 during any testing session.
6. The contractor must ensure that all test proctors are at least 21 years of age and have passed a finger-print based background check.
7. The contractor must ensure that only the actual testing students are allowed in the testing area.
8. The Department issued Unique Exam Identifier (Test Number) must be included on all testing instruments.
9. The contractor must ensure that only the test proctors or test administrators are responsible for entering the exam answers into the Driver License Testing Web Service.
10. The contractor must secure and retain all printed exams and student data for three (3) years after issuance date. Each student must sign and date the printed exam.
11. The contractor must ensure that no parties other than the contractor and its tester proctors, gain access to the Department's library of knowledge test questions in any form. They must also ensure that knowledge test questions are not revealed to applicants except during the administration of the test.

B. On-line Road Rules and Road Signs

1. The Department must approve any on-line test website prior to the contractor offering any on-line testing to the public.

2. The Department agrees to issue one (1) set of exam questions for each student, with the exception of retesting.
3. The contractor must submit all completed exams back to the Department for grading.
4. The contractor must ensure Knowledge testing is conducted in the same manner as those tests given by driver license examiners and only administered to applicants less than 18 years of age.
5. The contractor must not allow the same computer IP address to request exams for more than three different students.
6. The contractor must retain all student data for three (3) years after exam issuance date.
7. Prior to administering the exam, the contractor must inform both the student and the student's parent or guardian that giving false statements regarding the student's testing efforts constitutes fraud and can jeopardize both the student and parent's or guardian's driver license. The statement must appear exactly as follows: "Any student or parent or guardian giving false statements regarding the student's testing efforts is committing fraud and subject to license cancellation for a period of one (1) year in accordance with section 322.22 and 322.27(1)(d) F.S."
8. Before issuing any exam, the contractor must inform and require parents or guardians to electronically certify that the student will be monitored, but not assisted, during the on-line examination. The statement must appear exactly as follows: "Prior to the issuance of any exam, the parent or guardian is required to electronically certify that the student will be monitored and not assisted during the on-line exam."
9. The contractor must inform parents or guardians that, prior to the issuance of a learner's license, the parent or guardian is required to certify to the Department that the student was monitored during the on-line examination and that the parent or guardian was aware of and allowed the student to take the examination on-line. The statement must appear exactly as follows: "Prior to the issuance of a learner's license, the parent or guardian is required to certify to the Department that the student was monitored during the on-line examination and that the parent or guardian was aware of and allowed the student to take the examination on-line."
10. The contractor must inform and require parents or guardians to provide a valid driver license number at the beginning of the on-line examination. The statement must appear exactly as follows: "The parent or guardian is required to provide a valid driver license number at the beginning of the on-line examination."
11. The contractor must inform and require the testing student to answer personal security questions before and during the on-line examination. The statement must appear exactly as follows: "As a testing student you are required to answer personal security questions before and during the on-line examination."
12. The contractor must enforce a 50 second time limit to respond to each question. Failure to respond within this time limit must result in that question being answered incorrectly and applied to the final pass/fail result.

13. The Department issued Unique Exam Identifier (Test Number) must be electronically stored with all testing data.
14. The contractor must ensure that no parties other than the contractor gain access to the Department's library of knowledge test questions in any form. They must also ensure that knowledge test questions are not revealed to applicants except during the administration of the test.

SECTION VIII. TERMINATION AND REAPPLICATION

A. TERMINATION: The Department reserves the right to terminate this agreement upon determining the contractor has done one or more of the following:

1. Failed to continuously maintain the required qualifications under this agreement during the term of this agreement and any renewal period.
2. Violated any term or condition of this agreement.
3. Knowingly permitted driver license testing by a person who is not listed as a third party tester or does not hold a valid instructor certificate.
4. Been convicted of a crime involving any drug or DUI related offense in the past five (5) years, any felony conviction, the commission of fraud, or a crime directly related to the personal safety of a student.
5. Fraudulently or by misrepresentation obtaining or assisting a person to obtain any driver license, testing authorization, or obtaining or possessing any materials used by the Department to administer any driver license examination, without the authorization of the Department.
6. Forty-five days non-payment of re-test fees for driver license retests.
7. Failure to use the Department's Driver License Testing Web Service for all Class E license testing activity, including requesting test questions and submitting test results.
8. Knowingly using another form of Class E license test questions.
9. Knowingly storing or banking test questions issued through the Department's Driver License Testing Web Service for purposes other than those required in Section VII.

B. REAPPLICATION: A contractor whose agreement is terminated may reapply with the Department for authorization upon the expiration of three (3) years from the date of termination.

C. NOTICE: Termination of this agreement shall be effected by furnishing the contractor with written notice which shall include a short and plain statement of the facts necessitating the termination. Any notice of termination shall be given according to the procedures set forth in section 120.60 F.S. and implementing rules of that section. If the Department determines that grounds for termination exist that relate to a failure to comply with or satisfy any provision of this agreement, the Department may postpone termination and allow the contractor 30 days to correct the deficiency.

D. OTHER TERMINATION: In the event that section 322.56, F.S., is repealed or amended by the Legislature to remove authority for this type contract, this agreement will terminate on the effective date of such act. This agreement may be terminated by the contractor upon 30 days advance written notice to the Department. The Department may unilaterally terminate this agreement for refusal of the contractor to allow public access to all documents, papers, letters or other material subject to provisions of Chapter 119 (Public Records Law), Florida Statutes, and made or received by the contractor in conjunction with this agreement. Contractor shall protect the personal information of an applicant or their parent or guardian as set forth in section 119.0712(2) F.S. adopting the Driver Privacy Protection Act. This agreement is subject to termination by the Department, subject to the requirements of Section VIII.C, if the contractor fails or refuses to comply with any provision of this agreement or any Florida Law.

SECTION IX. LIABILITY

It is expressly understood and acknowledged that all rights under this agreement do not create any liability for the Department for any acts of the contractor that result in claims, actions or litigation as a result of the contractor providing services to the public under this agreement. It is also expressly understood and acknowledged that the contractor is an independent contractor and is not an agent of the State of Florida or the Department. The Department is not liable for any acts of the contractor, its employees, instructors or agents.

SECTION X. AMENDMENTS

The Contractor agrees to accept any amendments to this agreement necessitated by a change in any law upon written notice by the Department. Any other amendments to this agreement must be written and acknowledged by a duly authorized representative of both parties to this agreement.

SECTION XI. NON-ASSIGNABILITY

This agreement and the contractor's authority hereunder are not assignable by the contractor, either in whole, or in part.

SECTION XII. BOND

If authorized to test applicants, the contractor shall secure and maintain during the life of this agreement, a performance or similar bond guaranteeing that the terms and conditions of the contract specifications and the requirements associated with this contract will be fulfilled. A bond meeting this requirement must explicitly stipulate the following in the language of the bonding document or by reference to this section of the agreement:

1. The amount of the bond must be \$50,000.00.
2. The bond will obligate payment of valid claims to the Department.
3. Valid claims against the bond may apply to any terms or conditions of this agreement in the event that the contractor's failure to comply with the terms and conditions of this agreement may be reasonably deemed to cause defined costs to the Department or to affected driver license applicants. Payable costs associated with the contractor's failure to comply may include, but are not limited to, compensation of drivers required to be retested, Department administrative costs, and Department legal costs.

4. Liability for payment is not limited to circumstances in which employees or agents of the contractor are criminally convicted for the actions deemed to violate the terms and conditions of this agreement, or to circumstances in which the contractor knowingly conspired in such violations.
5. The bonding company must notify the Department's Contract Manager, in writing within five (5) working days of any cancellation, failure of the contractor to make due payment or other condition that causes discontinuation or reduction of the required coverage provided by the performance or similar bond. Failure to maintain a performance or similar bond that meets the requirements of the Department as set forth in this agreement will constitute failure to comply with this agreement.
6. Expiration or termination of the bond does not relieve liability for payment of valid claims associated with the contractor's failure to comply with this agreement during the period the bond was in effect.
7. A letter of credit (LOC) meeting all substantive requirements of this section may be submitted in lieu of a performance bond. The Department will only accept LOCs issued by financial institutions organized under the laws of Florida.

SECTION XIII. INSURANCE

COMMERCIAL GENERAL LIABILITY: The contractor shall take out and maintain Commercial General Liability insurance including products and completed operations, for the entire length of this agreement. This insurance will provide coverage for all claims that may arise from the operations completed under this agreement, whether such operations are by the contractor or the contractor's agents, testers, or other employees. Such insurance shall include a Hold Harmless Agreement in favor of the State of Florida, Department of Highway Safety and Motor Vehicles, must name the Department as the certificate holder, and must include the State of Florida as Additional Insured for the entire length of the agreement.

Minimum Limits of Liability:	\$1,000,000.00 each occurrence
	\$2,000,000.00 Aggregate

SECTION XIV. WAIVER AND SEVERABILITY

A waiver by either party of any provision of this agreement shall not act as a waiver of any other provision of this agreement. If any provision of this agreement is for any reason declared invalid, illegal or unenforceable, that declaration shall not affect the remainder of the provision of this agreement.

SECTION XV. LIABILITY AND ATTORNEY FEES

1. The Department has no responsibility for any changes in the law by the Florida Legislature and, in no event, shall the Department or the State of Florida be responsible for any damages that may be incurred as a result of reliance of the contractor on the continuation of this agreement.
2. It is expressly understood that the contractor is an independent contractor, not an agent of the Department. The Department's liability in negligence or indemnity for acts of its employees or officers will be only as provided under section 768.28, F.S.
3. The Department shall not be responsible for attorney fees except as provided by Florida Statute.

