

AGREEMENT BETWEEN
THE STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
AND

This agreement (hereinafter "Agreement") is entered into on the date of last signature, by and between the State of Florida, Department of Highway Safety and Motor Vehicles (hereinafter "FLHSMV" or "Department") and _____ (hereinafter "Third-Party Administrator"), which are the Parties hereto.

WITNESSETH:

WHEREAS, the Department is a State agency created under section 20.24, Florida Statutes (F.S.), whose duties and responsibilities include maintaining the safety and security of Florida's highways through enforcement of traffic laws, issuance and regulation of Florida driver licenses, identification cards, and titles, and registration of motor vehicles, mobile homes and vessels, pursuant to Chapters 316 through 324, 328, and 488, F.S., and Chapter 15, Florida Administrative Code (F.A.C.);

WHEREAS, the Third-Party Administrator seeks to operate a Third-Party Driver License Examination Service for the purpose of administering Class E Knowledge Exams to the public; and

WHEREAS, section 322.56, Florida Statutes (F.S.), provides authority for the Department to contract with third-party entities to administer Class E Knowledge Exams within the state of Florida.

NOW THEREFORE, the Department and the Third-Party Administrator, in consideration of the duties and responsibilities set forth herein, mutually agree as follows:

SECTION I. GOVERNING AUTHORITY

This Agreement is entered into pursuant to section 322.56, F.S., and Rule 15A-1, F.A.C., which are incorporated herein by reference. By executing this Agreement, the Third-Party Administrator agrees to meet and comply with any and all applicable provisions of law and administrative rule, as well as the terms and conditions of this Agreement.

SECTION II. DEFINITIONS

The following words and terms, when used in this document, shall have the following meanings:

- A. APPLICANT:** A person who receives driver license examination services from a Third-Party Administrator.
- B. APPLICANT DATA:** Information on the applicant consisting of any of the following: full name, date of birth, gender, social security number, alien registration number, admissions number, Florida identification number, and all parent or guardian attestation statements.

- C. AUTOMATED DRIVER LICENSE TESTING SYSTEM:** A web-based system that facilitates the electronic administration of Class E driver license exams and contains the official examination questions, images, scoring processes, Applicant Data and exam results.
- D. CLASS E DRIVER LICENSE:** In Florida's classified licensing system, the non-commercial license type required to drive standard passenger vehicles and light trucks not requiring a higher license class, in accordance with section 322.54, F. S.
- E. CLASS E KNOWLEDGE EXAM:** An examination of an applicant's understanding of driving rules and traffic signs and signals also referenced as written examination in Chapter 15A-I, F.A.C.
- F. CONTRACT MANAGER:** The Department's representative authorized to manage this Agreement on behalf of the Department. For purposes of the application, the person authorized to manage this Agreement on behalf of the Third-Party Administrator.
- G. CONTRACT NUMBER:** The assigned number appearing on the front page of the executed Agreement that identifies the Third-Party Administrator's Agreement, in applicable program documents and information systems.
- H. CORPORATE OFFICER:** 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.
- I. DEPARTMENT:** The Florida Department of Highway Safety and Motor Vehicles, an agency of the State of Florida created pursuant to section 20.24, F.S.
- J. DRIVER LICENSE EXAMINATION SERVICE:** Any activity for compensation related to administering online driver license examinations for a Class E Driver License.
- K. 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 Department approved contract with the Third-Party Administrator and receives annually an Internal Revenue Service Form 1099.
- L. IMMEDIATE FAMILY MEMBER:** An individual related as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the member or who otherwise holds himself or herself out as or is generally known as the person whom the member intends to marry or with whom the member intends to form a household, or any other natural person having the same legal residence as the member.
- M. LEARNER'S LICENSE:** In Florida's classified licensing system, the restricted non-commercial license type required to drive standard passenger vehicles and light trucks while in the company of a person 21 years or older who possesses a valid Class E Driver License.
- N. THIRD-PARTY ADMINISTRATOR:** A person, entity of state government, subdivision of state

government, public or private corporation, firm, organization, school, or entity of a local government that administers portions of an examination for driver licenses, the results of which may be accepted in lieu of the results of the examination given by the Department. The Third-Party Administrator must be authorized by the Department and accept responsibility for the performance of all activities under this Agreement.

- O. THIRD-PARTY EXAMINER:** An individual who is an employee of a Third-Party Administrator and who is personally qualified to conduct a Class E Exam. Also referred to as "Examiner."

SECTION III. ELIGIBILITY

A. APPLICATION: Prior to entering into this Agreement, the Third-Party Administrator was required to submit to the Department a completed HSMV Form 77067, Application for Authority to Conduct Third-Party Driver License Testing, including all required documentation. This Agreement is executed subject to the information in the application and supporting documentation being accurate, true, and valid and will be void if, at any time subsequent to its execution, the Department becomes aware that information in the application or in the documentation supporting the application is inaccurate, untrue, or invalid.

B. QUALIFICATIONS: The Third-Party Administrator and all Examiners must have or maintain the following qualifications:

1. Be 21 years of age or older;
2. Possess a high school diploma or its equivalent;
3. Possess a valid Class E Driver License or its equivalent with no cancellations, suspensions, or revocations of the driving privilege for a minimum of six (6) years prior to and for the duration of this Agreement;
4. Maintain a driving record with no more than two (2) chargeable motor vehicle crashes or any violations defined in Chapter 316, F.S. for a minimum of six (6) years prior to and for the duration of this Agreement; and
5. Have no criminal convictions for offenses bearing on his or her ability to fill a position of trust as a Third-Party Administrator or Examiner, including but not limited to alcohol or drug-related offenses within ten (10) years immediately prior to the date of this Agreement, and any misdemeanor involving dishonesty or false statements or any felony at any time. Any applicant who has pled nolo contendere or guilty to any of the aforementioned offenses shall be ineligible to contract with the Department.

C. BACKGROUND CHECK: The Third-Party Administrator, each Examiner, employee, agent, corporate officer, partner, and owner must submit to a fingerprint-based background check performed by a "Live Scan" Provider with results provided to the Department at the time of the application. The background check must be performed within the 90 days prior to the date of the application. The Department will notify the Third-Party Administrator of any disqualifying background check with the denial of application.

1. Each new employee hired by the Third-Party Administrator, and each new corporate officer,

partner or owner must submit to a fingerprint-based background check performed by a "Live Scan" Provider before commencing employment or association with the Third-Party Administrator.

2. The Third-Party Administrator must notify the Department's Contract Manager in writing of hiring of employees, or the addition or replacement of corporate officers, partners, or owners. New employees must submit to a fingerprint-based background check performed by a "Live Scan" Provider before commencing employment. .

D. COMMERCIAL GENERAL LIABILITY: The Third-Party Administrator must secure and maintain Commercial General Liability insurance 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 Third-Party Administrator or the Third-Party Administrator's agents, examiners, or other employees. Such insurance must provide the same coverage for 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 each occurrence
	\$2,000,000 Aggregate

E. HOLD HARMLESS ENDORSEMENT: The Third-Party Administrator agrees to indemnify and hold harmless the State of Florida, Department of Highway Safety and Motor Vehicles, and Department employees from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the Third-Party Administrator or the Third-Party Administrator's agents, Third-Party Examiners, or other employees in the execution of the work to be performed hereunder, or in consequence of any negligence or carelessness regarding the same.

F. WORKERS' COMPENSATION: The Third-Party Administrator must secure and maintain, during the life of this Agreement, Workers' Compensation Insurance for all of its employees, in accordance with Chapter 440, F.S., working in connection with this Agreement.

Minimum Employer's Liability Limits:	\$100,000 each accident
	\$500,000 policy limit
	\$100,000 each employee

G. PERFORMANCE BOND: The Third-Party Administrator must secure and maintain, during the life of this Agreement, a Performance Bond guaranteeing that the terms and conditions of the Agreement specifications and the requirements associated with this Agreement 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 a minimum of \$200,000.
2. The bond will obligate payment to the Department for any valid claims.
3. Valid claims against the bond may apply to any terms or conditions of this Agreement in the event that the Third-Party Administrator'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 Third-Party Administrator's failure to comply may include, but are not limited to, compensation of drivers required to be re-examined, Department administrative costs, and Department legal costs.

4. Liability for payment is not limited to circumstances in which employees or agents of the Third-Party Administrator are criminally convicted for the actions deemed to violate the terms and conditions of this Agreement, or to circumstances in which the Third-Party Administrator conspired in such violations.
5. The Third-Party Administrator must require that the bonding company notify the Department's designated representative, as named in Section X, in writing within five working days of any cancellation, failure of the Third-Party Administrator to make payment or other condition that causes discontinuation or reduction of the required coverage provided by the performance bond. Failure to maintain a performance 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 other termination of the bond does not relieve liability for payment of valid claims associated with the Third-Party Administrator'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 or recognized under the laws of Florida.

SECTION IV. CLASS E KNOWLEDGE EXAMINATION

A. AUTOMATED DRIVER LICENSE TESTING SYSTEM: The Third-Party Administrator must use the Department's Automated Driver License Testing System for all Class E Knowledge Exams. No other system or examination questions may be used. If the Department obtains a new examination system, the Third-Party Administrator agrees to use the new examination system within 90 days of availability.

B. CLASS E KNOWLEDGE TESTING LOCATIONS: The Department authorizes the Third-Party Administrator to administer Class E Knowledge Exams as indicated below.

1. If authorized by the Department, the Third-Party Administrator shall administer Class E Knowledge Exam in a proctored environment at the following place-of-business located within the State of Florida.

2. Third-Party Administrators that are authorized by the Department to administer the Class E Knowledge Exam solely to applicants less than 18 years of age, are not required to maintain a place of business in Florida provided their services are limited to administering the exam via an approved, online exam website meeting the requirements set forth in this Agreement.

C. CLASS E KNOWLEDGE EXAM QUESTION BANK: The Third-Party Administrator is prohibited from collecting, storing, banking, selling, or revealing the Department's Class E Knowledge Exam questions, answers, and related images. The Third-Party Administrator is prohibited from using the Department's Class E Knowledge Exam questions for practice exams, exam preparation, or any other use. The Third-Party Administrator may create, store, bank or use questions developed independently of the Department's question bank for use as practice exam questions or for use in states other than Florida.

D. CLASS E KNOWLEDGE EXAM ADMINISTRATION: Each applicant must be administered the unique randomly generated exam provided electronically by the Automated Driver License Testing System.

1. Prior to administering any exam, the Third-Party Administrator must submit the applicant's identification information by obtaining the following:
 - a. Full name
 - b. Date of Birth
 - c. Gender
 - d. One of the following unique identifiers:
 - i. Last five-digits of the Social Security Number; or
 - ii. Alien registration number; or
 - iii. Admissions number; or
 - iv. Florida ID card number.
2. Class E Knowledge Exams must be conducted by Third-Party Administrators in the same manner as those Class E Knowledge Exams given by state or tax collector driver license examiners.
3. Third-Party Administrators are prohibited from administering oral exams. If an applicant requires an oral exam, the applicant must take the exam at a driver license or tax collector's office.
4. Applicants are limited to a total of three knowledge tests using a Third-Party Administrator. After the third test, the applicant must be tested at a driver license service center or tax collector office.

E. RANDOM RE-EXAMINATION: Prior to the exam, the Third-Party Administrator must notify the applicant and parent or guardian that the applicant may be selected for re-examination at a driver license or tax collector office. The statement must appear exactly as follows: "All applicants are subject to random selection for re-examination at the driver license or tax collector office prior to the issuance of any license. Failure to pass the random re-exam will require the applicant to pass the knowledge exam prior to license issuance."

The Department may, in its sole discretion, require a retest of any applicant without regard to the electronic results submitted to the Department.

F. APPLICANT DATA: The Third-Party Administrator must ensure the personal information of the

applicant, the personal information of the parent or guardian, and all financial information provided to the Third-Party Administrator as part of this Agreement is protected from unauthorized access or disclosure. Further, the Third-Party Administrator must protect the personal information of an applicant and their parent or guardian, if applicable, pursuant to the requirements of section 119.0712(2), F.S., and the Driver Privacy Protection Act, 18 U.S.C. §2721-2725. Applicant Data that is retained under this Agreement must be stored so that only authorized users may access the information and may be used only for the purposes of this Agreement. During the retention period, the Applicant Data must be backed up to protect against data loss and all backups must be maintained in such a way as to only allow authorized users to access the information. Transmission of Applicant Data must use encryption to protect the confidentiality of the data and must only be sent to persons or entities who are authorized to receive such data by this Agreement or pursuant to applicable law or rule. Applicant Data that exceeds the record retention period must be securely disposed of so that confidentiality is maintained. Further, the Third-Party Administrator must comply with the provisions of section 501.171, F.S.

G. ON-LINE CLASS E KNOWLEDGE EXAMS:

1. The Department must approve any online exam website prior to the Third-Party Administrator offering any online examinations to the public.
2. The Third-Party Administrator must ensure online Class E Knowledge Exams are administered only to applicants less than 18 years of age. (section 322.56(8)(a), F.S.)
3. To minimize the risk of fraud, the Third-Party Administrator must not allow the same computer IP address to request exams for more than three (3) different applicants in a 24-hour period, and the Third-Party Administrator must limit credit card transactions to three (3) exam transactions from the same credit card number in a 24-hour period.
4. Prior to administering the exam, the Third-Party Administrator must inform both the applicant and the applicant's parent or guardian that giving false statements regarding the applicant's examination efforts constitutes fraud and can jeopardize both the applicant's and parent's or guardian's driver license. The statement must appear exactly as follows: "Any applicant or parent or guardian giving false statements regarding the applicant's examination efforts is committing fraud and subject to license cancellation for a period of one year in accordance with section 322.22 and 322.27(1)(d), Florida Statutes."
5. Before commencing any exam, the Third-Party Administrator must inform and require parents or guardians to electronically certify that the applicant will be monitored, but not assisted, during the online 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 applicant will be monitored and not assisted during the online exam."
6. The Third-Party Administrator must inform and require parents or guardians to provide a valid Florida driver license number at the beginning of the online 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 online examination."
7. The Third-Party Administrator must inform and require the examining applicant to answer personal security questions before and during the online examination. The statement must appear exactly as follows: "As an examining applicant you are required to answer personal

security questions before and during the online examination."

8. The Third-Party Administrator must inform applicants of and enforce a 60-minute limit per exam. Any questions not answered during this time limit will be marked as incorrect.
9. The Third-Party Administrator 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 applicant was monitored during the online examination and that the parent or guardian was aware of and allowed the applicant to take the examination online. 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 applicant was monitored during the online examination and that the parent or guardian was aware of and allowed the applicant to take the examination online."

H. PROCTORED CLASS E KNOWLEDGE EXAMS:

1. The Third-Party Administrator must provide an indoor area suitable for examination, computers, and Internet connectivity meeting specifications for the Automated Driver License Testing System.
2. The Third-Party Administrator must ensure that the examination area is free from distractions or interference that would affect the examining ability of any applicant.
3. The Third-Party Administrator must ensure an applicant to Third-Party Examiner ratio of no more than 25:1 during any examination session.
4. The Third-Party Administrator must ensure that only the actual examining applicants are allowed in the examination area.

SECTION V. PROFESSIONAL CONDUCT

- A. PROHIBITED HIRING PRACTICES:** The Third-Party Administrator must not engage the services of any current employee of the Division of Motorist Services, or of a tax collector who is serving as a licensing agent of the Department, pursuant to section 322.135, F. S., as a Third-Party Examiner, agent, or employee.
- B. APPLICANT ASSISTANCE:** The Third-Party Administrator must not permit any Third-Party Examiner, employee, or agent of the Third-Party Administrator to assist any driver license applicant during the administration of the Class E Knowledge Exam covered under this Agreement. The Third-Party Administrator agrees that no translator or other intermediary will be permitted to interpret portions of the Class E Knowledge Exam. . Third-Party Administrators may only present Class E Knowledge Exams in the languages authorized by the Department through its Automated Driver License Testing System.
- C. SOLICITATION AND ADMINISTRATION OF CLASS E KNOWLEDGE EXAM:** The Third-Party Administrator and its Third-Party Examiners, employees, or agents must not solicit any individual or administer any Class E Knowledge Exams on premises rented, leased, or owned by the Department or tax collectors serving as licensing agents of the Department.
- D. GIFTS:** The Third-Party Administrator and its Third-Party Examiners, employees, or agents must not

solicit or accept from any person, business, or organization any gift (including money, tangible or intangible personal property, food, beverage, loan, promise, service, or entertainment) for business or personal benefit as related to the subject of this Agreement.

E. ADVERTISING: The Third-Party Administrator must not:

1. Indicate that its service is in any way endorsed by the Department, except to say that it is authorized by the State or Florida or by the Department;
2. Utilize advertising that in any way would reasonably lead the public to believe they are or were an employee or representative of the Department, including, but not limited to use of signage, posters, business cards, flyers, or other printed or produced materials bearing the same or similar logos, color schemes, wording, titles, or acronyms, or in the same or similar sized format, font, or appearance, as are utilized by the Department in delivering driver license-related services to the public;
3. Utilize advertising or make any representation that indicates, in any way, that the Third-Party Administrator can issue or guarantee the issuance of a driver license or implies that the Third-Party Administrator can in any way influence the Department in the issuance of a driver license, or implies that preferential or advantageous treatment can be obtained from the Department or;
4. Use any name in its advertising besides the name on its application or use the words or acronyms "Department of Highway Safety and Motor Vehicles", "DMV", "DHSMV", "FLHSMV", "HSMV", "BMV" or any other words, acronyms or logos that are associated with the Department of Highway Safety and Motor Vehicles in any part of its name or in any other matter.

F. PROHIBITION ON SEXUAL HARASSMENT: Third-Party Administrators and its Third-Party Examiners, employees or agents must not engage in any conduct that constitutes sexual harassment, as defined by section 703 of Title VII, 29 CFR s. 1604.11. The term sexual harassment includes unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

G. PROHIBITION ON EXAMINING FAMILY AND FRIENDS: The Third-Party Administrator agrees that its Third-Party Examiners, employees, or agents will not be permitted to conduct exams under this Agreement for immediate family members or friends. The Department will have sole discretion to determine whether examining a specific applicant would violate this section. Upon request by the Third-Party Administrator or Third-Party Examiner, the Department will provide an advance determination.

H. APPOINTMENTS FOR DRIVER LICENSE SERVICES: The Third-Party Administrator may not secure appointments for driver license services on behalf of the applicant. The Department's driver license appointment system was designed to give public access to driver license services. Manipulating the appointment system for financial gain such as selling appointments is strictly prohibited.

SECTION VI. ADDITIONAL TERMS

A. AGREEMENT TERM AND VALIDITY: This Agreement shall be for a three-year term beginning upon the date of execution by both parties and will remain in effect during this period unless it becomes subject to suspension, termination, or cancellation in accordance with this Agreement. The Third-Party Administrator must enter into a separate contract with the Department's designated

Automated Driver License Testing System vendor.

This Agreement may be renewed for a period not to exceed three (3) years. Renewals are contingent upon satisfactory compliance by the Third-Party Administrator with the terms and conditions of the Agreement, as determined by the Department; Third-Party Administrator's submission to the Department of a new, completed HSMV Form 77067, Application for Authority to Conduct Third-Party Driver License Testing, including all required documentation; and verification by the Department of the Third-Party Administrator's eligibility, as defined in SECTION III. ELIGIBILITY.

- B. PROCTORED CLASS E KNOWLEDGE EXAMS PLACE OF BUSINESS:** If authorized to administer Proctored Exams, the Third-Party Administrator must continuously maintain a place of business that includes a permanent, regularly occupied building located within the state of Florida and which meets all applicable safety and legal requirements of the federal, state, and local governments. A Third-Party Administrator's facility must not be established within 300 feet of any driver license or tax collector office and entry to the facility must be accessible, with doors unlocked, during advertised business hours. The Third-Party Administrator may request an exemption to this provision by submitting a written request to the Program Contract Manager. The Program Contract Manager will respond in writing either granting or denying the request for exemption within 15 days of receipt.
- C. MAILING ADDRESS:** The Third-Party Administrator must maintain a permanent mailing address and provide this address to the Department's Contract Manager.
- D. THIRD-PARTY EXAMINER RECORDS:** The Third-Party Administrator must maintain the following records for each Third-Party Examiner in the employ of the Third-Party Administrator: documentation verifying the individual's status as an employee; current home address and telephone number; and Department or other official state driver record updated at least once every six months. Each record must be maintained for at least three years after the Third-Party Examiner leaves the employ of the Third-Party Administrator.
- E. REQUIRED NOTIFICATIONS:** The Third-Party Administrator must submit a new application with all necessary supporting documents within ten days prior to any change to the business name, business ownership, or business structure under which the Third-Party Administrator operates.
1. Notwithstanding subsection O., AMENDMENTS, below, any changes to the Third-Party Administrator's principal place of business or mailing address must be made by submitting written notice to the Department's Contract Manager within ten days of the change.
 2. The Third-Party Administrator is required to notify the Department's Contract Manager of any criminal offenses allegedly committed by the Third-Party Administrator or Third-Party Examiner in its employ within 72 hours of an arrest. The notification must include the nature of the charge(s), the name of the arresting agency, and a copy of the arrest warrant and/or the law enforcement report.
- F. COLLECTION AND PAYMENT OF RE-EXAM FEES:** The Third-Party Administrator agrees to pay the Department for each re-exam issued to any applicant in accordance with Chapter 322, F.S. The Third-Party Administrator must ensure that funds to cover all fees for license re-examination are available within 24 hours of obtaining the re-exam Class E Knowledge Exam or the Third-Party Administrator will be disqualified from issuing driver license exams until balance is paid in full.

1. The Third-Party Administrator shall deposit all monies owed to the Department in an account with a state or federally chartered commercial bank insured by the Federal Deposit Insurance Corporation, or in an account with a state or federally chartered credit union insured by the National Credit Union Administration.
 2. The Third-Party Administrator agrees to allow the Department to use a state-contracted vendor to automatically debit the Third-Party Administrator's bank account for the payment of re-exam fees.
 3. The Third-Party Administrator must submit one banking account number to the Department for the purposes of automatic debiting for the payment of re-exam fees.
 4. The Third-Party Administrator agrees to pay to the Department all fees associated with the set-up of automatic debiting through the state contracted vendor, if applicable.
- G. SYSTEM FAILURE AND MAINTENANCE:** In the event of a system outage, the Third-Party Administrator must provide an on-screen message to applicants using the testing system that the examination system is temporarily unavailable. The Department will notify the Third-Party Administrator five days prior to scheduled maintenance or any other planned outages.
- H. RECORDS RETENTION:** The Third-Party Administrator must retain all Applicant Data for five (5) years after Class E Driving Skills Exam issuance date. The Third-Party Administrator must retain all financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to performance under this Agreement for a period of five years after termination of this Agreement. If an audit has been initiated and audit findings have not been resolved at the end of five years, the records must be retained until resolution of the audit findings. The Department's right of access in this section is not limited to the required retention period but lasts as long as the records are retained.
- I. TRAINING:** Third-Party Administrators and Third-Party Examiners must attend periodic training sessions conducted by the Department.
- J. STATUTORY REQUIREMENTS OF THE THIRD-PARTY ADMINISTRATOR:**
1. Pursuant to section 322.56, F.S., the Third-Party Administrator expressly agrees to the following requirements:
 - a. Allow the Federal Highway Administration, or its representative, to conduct random examinations, inspections, and audits without prior notice;
 - b. Allow the Department, or its representative, to conduct random examinations, inspections, and audits without prior notice;
 - c. Allow the Department to conduct onsite inspections at least annually;
 - d. Require that all Third-Party Administrators meet the same qualifications and education and training standards as Department examiners, to the extent necessary to conduct the written and driving skills portions of the examination;
 - e. Allow the Department to test, at least annually, a random sample of the drivers approved by the Third-Party Administrator for licensure; and

- f. Reserve to the Department the right to take prompt and appropriate action against a Third-Party Administrator and their agents and employees that fails to comply with state or federal standards for a driver license examination or that fails to comply with any terms or conditions of this Agreement.
2. Americans with Disabilities Act: The Third-Party Administrator must comply with federal and state laws related to accommodating applicants with special needs.
- K. PUBLIC RECORDS REQUEST:** The Department may unilaterally cancel this Agreement (for purposes of this section “Contract”) for refusal by the Third-Party Administrator (for purposes of this section “Contractor”) to allow public access to all documents, papers, letters, or other material made or received by the Contractor in conjunction with this Contract, unless the records are exempt from section 24(a) of Article I of the State Constitution and subsection 119.07(1), F.S.

The Contractor, when acting on behalf of the Department, shall in addition to all other conditions of this contract:

1. Keep and maintain public records required by the Department to perform the service.
2. Upon request from the Department’s custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost as set forth in the Department’s Policy Number 9.03, Providing Records to the Public, which can be provided by the Department upon request or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term, and following completion of the Contract, if the Contractor does not transfer the records to the Department.
4. Upon completion of the Contract, transfer, at no cost to the Department, all public records in possession of the Contractor or keep and maintain public records required by the Department to perform the service. If the Contractor transfers all public records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department’s custodian of public records or Contract Manager, in a format that is compatible with the information technology systems of the Department.

Pursuant to subsection 119.0701(3), F.S., in the event the Contractor fails to comply with a public records request, the Department will enforce all Contract provisions related to public records requests by assessing the following:

First violation - \$100 penalty.

Second violation - \$250 penalty.

More than two (2) violations - \$500 penalty and/or possible Contract termination depending upon the nature of the violations.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATED TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (850) 617-3101, OGCFiling@FLHSMV.GOV, OFFICE OF GENERAL COUNSEL, 2900 APALACHEE PARKWAY, STE. A432, TALLAHASSEE, FL 32399-0504.

- L. NON-ASSIGNABILITY:** This Agreement and the Third-Party Administrator's authority hereunder are not assignable by the Third-Party Administrator, either in whole, or in part.
- M. EXPIRED AGREEMENT:** The Third-Party Administrator must not conduct business on an expired, terminated, or cancelled Agreement.
- N. WAIVER AND SEVERABILITY:** A waiver by either party of any provision of this Agreement does 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 does not affect the remainder of the provision of this Agreement.
- O. AMENDMENTS:** The Third-Party Administrator agrees if any provision of this Agreement should be or is changed or otherwise modified by a change in applicable law or policy, to comply with such change as if the Agreement had been amended on or before the revised law's effective date. Incorporation of changes/modifications made necessary by changes in law are not required to be made by amendment of the Agreement. The Department will endeavor to send advanced notice of such changes to the Third-Party Administrator. Failure to do so, however, does not mean that the revised law does not apply. Further, unless otherwise stated herein, other changes or modifications to this Agreement must be by written amendment acknowledged by a duly authorized representative of each party to this Agreement.
- P. COOPERATION WITH INSPECTOR GENERAL:** Pursuant to section 20.055(5), F.S., the Third-Party Administrator, and any subcontractor, understands and will comply with its duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing related to this Agreement.
- Q. SERVICE COSTS:** The Third-Party Administrator is solely responsible for all costs related to its performance under this Agreement.
- R. GOVERNING LAW AND VENUE:** This Agreement is executed and entered into in the state of Florida, and shall be construed, performed and enforced in all respects in accordance with the laws, rules, and regulations of the state of Florida. Any action hereon or in connection herewith shall be brought in Leon County, Florida.
- S. NON-DISCRIMINATION/CONDUCT OF BUSINESS:** The Third-Party Administrator shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. This includes, but is not limited to, compliance with Titles VI and VII of the Civil Rights Act of 1964, 42 U.S.C. 2000d and 2000e et seq., the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., the Driver Privacy Protection Act, 18 U.S.C. 2721-2725, Chapter 760, F.S., and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or

veteran's status.

- T. SCRUTINIZED COMPANIES:** The Third-Party Administrator certifies that it is not listed on the Scrutinized Companies that Boycott Israel List created pursuant to section 215.4725, F.S. The Department may, at its option, terminate this Contract if the Third-Party Administrator is found to have submitted a false certification as provided under section 287.135(5), F.S.; or is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.
- U. E-VERIFY:** The Third-Party Administrator and any subcontractor(s), if applicable, must comply with the requirements of section 448.095, F.S., regarding registration and use of the E-Verify system operated by the U.S. Department of Homeland Security to verify the work authorization status of all newly hired employees.
- V.** Pursuant to section 216.1366, F.S., the Department is authorized to inspect: (a) financial records, papers, and documents of the Contractor that are directly related to the performance of the Contract or the expenditure of state funds; and (b) programmatic records, papers, and documents of the Contractor which the Department determines are necessary to monitor the performance of the Contract or to ensure that the terms of the Contract are being met. The Contractor shall provide such records, papers, and documents requested by the Department within 10 business days after the request is made.
- W. If applicable,** the Contractor must comply with the requirements of the State of Florida, Office of the Governor, Executive Order Number 20-044, issued February 20, 2020, regarding the submission of an annual report, as required by the Department, which shall include, in part, the Contractor's most recent IRS Form 990, *Return of Organization Exempt from Income Tax*.

SECTION VII. RESPONSIBILITIES OF THE DEPARTMENT

- A. EXAMINING AUTHORITY:** The Department agrees to permit the Third-Party Administrator to administer the Class E Knowledge Exam, using the Department's approved Automated Driver License Testing System for Class E driver license exams. In the event that the Department obtains a new examining system at any time during the term of this Agreement, the Third-Party Administrator agrees to use the new examining system within 90 days of availability.
- B. ADMINISTRATION AND ENFORCEMENT:** The Department will administer and enforce the provisions of the driver license Third-Party Examination program.
- C. TECHNICAL ASSISTANCE:** The Department will provide consultation to the Third-Party Administrator regarding laws, rules, and procedures for conduct of the program established under this Agreement.
- D. EXAM CONTENT AND PROCEDURES:** The Department will provide Department-approved exam items, necessary forms, and exam procedures for use by the Third-Party Administrator.
- E. LIST OF AUTHORIZED THIRD PARTIES:** The Department will maintain a list of all individuals who have been contracted as Third-Party Administrators. The Department's list is the official roster and prevails in the event of a dispute over which individuals are contracted as Third-Party Administrators and Third-Party Examiners.

SECTION VIII. LIABILITY

- A.** The Department has no responsibility for any changes in the law enacted by the Florida Legislature and, in no event, will the Department or the State of Florida be responsible for any damages that may be incurred as a result of reliance of the Third-Party Administrator on the terms or conditions of this Agreement, or its continuation.
- B.** It is expressly understood that the Third-Party Administrator is an independent Third-Party Administrator, not an agent of the Department, and the Department is not responsible for any action or inaction on the part of the Third-Party Administrator, its agents, or employees.
- C.** The Department's liability for the acts of its own employees or officers will be only as provided under section 768.28, F.S.

SECTION IX. TERMINATION OF AGREEMENT

- A.** The Department reserves the right to immediately terminate this Agreement upon determining the Third-Party Administrator or Third-Party Examiner in the employ of a Third-Party Administrator failed to comply with the terms of this Agreement by failing to meet any of the following requirements:
 - 1. Continuously maintaining the required qualifications under this Agreement during the term of this Agreement;
 - 2. Administering Class E Knowledge Exams honestly and without false statement, without obtaining or assisting a person in obtaining any driver license through fraudulent means or by misrepresentation, to include falsification of course completions that are required to obtain or reinstate driver license privilege;
 - 3. Obtaining or possessing materials used by the Department to administer any Class E examination only with the authorization of the Department or granting examination authority only to individuals who have obtained authorization to administer exams from the Department;
 - 4. Using only the Department's Automated Driver License Testing System for all Class E Knowledge Exams, with no unauthorized use and security breaches;
 - 5. Giving Class E Knowledge Exams only to applicants who possess valid identification and meet eligibility requirements defined in this Agreement;
 - 6. Maintaining strict security and accountability of Applicant Data and examination questions and answers including, but not limited to, any failure to comply with section 119.0712(2), F.S., and the Driver Privacy Protection Act, 18 U.S.C. §2721-2725 ;
 - 7. Conducting or behaving appropriately, with no conduct that the Department determines endangers the health, safety or welfare of the public or creates a hostile environment for any applicant or the general public. This includes, but is not limited to: threatening, harassing, intimidating, stalking, coercing, or otherwise posing an immediate or potential danger to the safety and welfare of other Third-Party Administrators or their Third-Party Examiners, employees, or agents; commercial driving schools or their instructors, agents, applicants; and Department or tax collector employees as documented by an official police report or by an

investigation conducted by the Department;

8. Conducting any type of business within 300 feet of any premises, including the parking areas, used by the Department or tax collector for the purpose of licensing;
9. Applying for Third-Party Administration of Class E Knowledge Exams honestly, without fraud or misrepresentation;
10. Paying driving license re-exam fees within five days as specified in this Agreement; or
11. Complying with any other term or condition of this Agreement or any applicable federal or state law or rule.

B. OTHER TERMINATION

1. In the event that section 322.56, F.S., is repealed or amended by the Legislature to remove authority for this type of agreement, this Agreement will terminate on the effective date of such act, without the requirement of providing Notice pursuant to Section IX.C.
2. This Agreement may be terminated by the Third-Party Administrator upon 30 days' advance written notice to the Department. A copy of said notice must be posted on the exterior door of the facility so as to be visible to the general public and their parent or guardian if applicable as set forth in section 119.0712(2), F.S., adopting the Driver Privacy Protection Act.
3. If the Department determines that the Third-Party Administrator has engaged in any fraudulent activity whatsoever, the Department has the authority to terminate all Third-Party Class E Testing Agreements between the Department and the Third-Party Administrator, regardless of whether the fraudulent activity was related to this Agreement or not. This provision includes Class E knowledge and Class E skills testing regardless of which testing violation warranted termination. For purposes of this subsection, the definition of "fraudulent activity" includes, but is not limited to, the abuse of authorities granted under this Agreement, or any other agreement with the Department, to gain profit through the issuance of a "passing" test result to an applicant that did not complete a Class E test in accordance with section 322.56(2), F.S.

C. DISPUTE RESOLUTION

1. The sole and exclusive means for the resolution of all claims, disputes, or controversies related to or arising from this Agreement that affect a party's substantial interests, including, but not limited to, a decision by the Department to terminate this Agreement for noncompliance, is pursuant to proceedings conducted pursuant to sections 120.569 and 120.57, F.S.
2. The Department shall provide the Third-Party Administrator with written notice of the Department's intended action pursuant to this Agreement.
3. The Department's intended action shall be final and conclusive unless, within twenty-one (21) days after the date of receipt of notice of the Department's intended action, the Third Party Administrator files with the Department a written request for an administrative hearing pursuant to section 120.569 and 120.57, F.S. If the Third Party Administrator fails to file with the Department a request for an administrative hearing within twenty-one (21) days after receipt of notice of the Department's intended action, the Third Party Administrator shall have waived the right subsequently to request a hearing on such matters.

4. The Department’s decision following any administrative hearing shall be final, subject only to the Third-Party Administrator’s right to review pursuant to section 120.68, F.S.

D. ELIGIBILITY TO REAPPLY

A Third-Party Administrator or Third-Party Examiner whose agreement is terminated, other than as provided for in Sections B.1. or B.2. above, is not eligible to reapply with the Department. A Third-Party Administrator or Third-Party Examiner who has had any disciplinary warnings from the Department with respect to the provision of services under any contract/agreement with the Department is not eligible to apply for three years from the date of the last disciplinary warning.

If the Department determines that during the term of this Agreement, the Third-Party Administrator has engaged in any fraudulent activity pursuant to Section IX.B.3., the Department has the authority to terminate all Third-Party Class E testing Agreements between the Department and the Third-Party Administrator, regardless of whether the fraudulent activity was related to any such agreement or not. This provision includes Class E knowledge and Class E Skills testing regardless of which testing violation warranted termination. The Department may also terminate all Third-Party Class E testing Agreements between the Department and the Third-Party Administrator for fraudulent activity occurring prior to the term of this Agreement that the Department becomes aware of during the term of this Agreement, whether such activity was related to any such agreement or not.

SECTION X. COMMUNICATIONS

The Third-Party Administrator and the Department designate the following individuals to receive the written notices and communications that are desired or required under this Agreement:

THIRD-PARTY ADMINISTRATOR:	DEPARTMENT:
Name: _____	Name: _____
Title: _____	Title: <u>PROGRAM CONTRACT MANAGER</u>
Address: _____	Address: <u>2900 APALACHEE PARKWAY</u>
City/State/Zip: _____	City/State/Zip: <u>TALLAHASSEE, FL 32399</u>
Email Address: _____	Email Address: _____
Telephone: _____	Telephone: _____

Any updates to this section must be made in writing to the other party within 14 days of the change, but do not necessitate a formal amendment to this Agreement.

SECTION XI. ENTIRE AGREEMENT

This instrument embodies the whole Agreement of the Parties regarding the subject matter hereof. There are no provisions, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the Parties hereto.

IN WITNESS WHEREOF, the respective authorized officials of the Department and the Third-Party Administrator have executed this Agreement on the dates indicated below.

**STATE OF FLORIDA, DEPARTMENT OF
HIGHWAY SAFETY AND MOTOR VEHICLES**

SIGNATURE

NAME

TITLE

DATE

FEIN

SIGNATURE

NAME

TITLE

DATE