

AGREEMENT

between the

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

and

BY AND BETWEEN the

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

(hereinafter the "Department")

and

(hereinafter the "Third Party Administrator")

Located at _____

_____, _____
(Third Party Administrator Address)

WITNESSETH:

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

WHEREAS, section 322.56, Florida Statutes, provides authority for the Department to contract with third party entities to administer Class E Driving Skills Exams; and

WHEREAS, section 322.56, Florida Statutes, also provides that the Department is authorized to adopt rules necessary to implement the law,

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

Chapter 322, Florida Statutes, and Rule 15A-1, Florida Administrative Code, is incorporated by reference into this agreement and each Third Party Administrator agrees to meet any and all applicable provisions of that Chapter and this agreement.

SECTION I. 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 the Third Party Administrator.
- B. **APPLICANT DATA:** Information on the applicant consisting of: 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, Florida.
- E. **CLASS E DRIVING SKILLS EXAM:** An examination of an applicant's ability to operate a motor vehicle also referenced as driving exam in Rule 15A-1, Florida Administrative Code.
- 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:** An assigned number that identifies the Third Party Administrator's Agreement where applicable in 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.
- J. **DRIVER LICENSE EXAMINATION SERVICE:** Any activity for compensation related to administering on-line 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. **EXAM ROUTE:** Any behind-the-wheel driving route where the Third Party Administrator and Examiners are authorized by the Department to conduct Class E Driving Skills Exams.
- M. **EXAM ROUTE NUMBER:** The number assigned to the physical address of each exam route where the Third Party Examiner is authorized to conduct Class E Driving Skills Exams.

- N. **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.
- O. **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.
- P. **THIRD PARTY ADMINISTRATOR:** A person, entity of the 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.
- Q. **THIRD PARTY EXAMINER:** An individual who is an employee of a Third Party Administrator and who is personally qualified to conduct a Class E Driving Skills Exam. Also referred to as "Examiner".

SECTION II. ELIGIBILITY

- A. **APPLICATION:** Prior to entering into this agreement, the Third Party Administrator must submit to the Department a completed HSMV Form 77067, Application for Authority to Conduct Third Party Driver License Testing, including all required documentation. An incomplete application or an application lacking the necessary paperwork will result in the application being denied.
- 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 three (3) years prior to and for the duration of this Agreement.
 4. Maintain a driving record with no more than three chargeable motor vehicle crashes or any violations defined in Chapter 316, Florida Statutes, during any consecutive three (3) year period during the term of this Agreement.
 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 the ten (10) years immediately prior to the date of this Agreement, and any misdemeanor involving dishonesty or false statement or a felony at any time.

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, 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 and provide the Department the results of such background checks within 30 days of 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 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 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 or in consequence of any negligence or carelessness in guarding the same. The Third Party Administrator must provide this endorsement signed on company letterhead as part of the application.

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 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 \$200,000.
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 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 IX, in writing within five working days of any cancellation, failure of the Third Party Administrator to make due 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 III. CLASS E DRIVING SKILLS 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 Driving Skills Exams. No other system or examination questions may be used. In the event that 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 DRIVING SKILLS EXAM ADMINISTRATION:** Each applicant must be administered
Class E Driving Skills Exam provided through the Automated Driver License Testing System.
 1. Prior to the exam, each applicant must complete an agreement defining the terms of services to be provided by the Third Party, including the type of services being offered and the cost of services. If an applicant refuses to sign the required agreement, the Class E Driving Skills Exam must not be administered.
 2. The Third Party Administrator and/or the Third Party Examiner in its employ must verify that each applicant possesses a valid Florida learner's license prior to

administering any Class E Driving Skills Exams. The Third Party Administrator must submit the applicant's identification information by obtaining the Florida driver license number.

3. Class E Driving Skills Exams must be conducted by Third Party Administrators in the same manner as those Class E Driving Skills Exams given by state or tax collector driver license examiners.
 4. Class E Driving Skills Exams must not be conducted if the applicant or examiner is under the influence of intoxicants to any degree whatsoever or with an odor of intoxicants on their breath.
 5. A Third Party Administrator or Third Party Examiners may not administer a Class E Driving Skills Exam to any applicant that has received driving skills instruction from that Third Party Administrator or Third Party Examiner.
 6. No one except the applicant, Third Party Administrator/Examiner, or interpreter, if necessary, is allowed in the vehicle, unless the passenger is a representative of the Department in an official capacity performing related job duties, when a Class E Driving Skills Exam is being administered.
 7. Class E Driving Skills Exams must only be conducted from sunrise to sunset.
- C. **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 the 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 driving skills exam prior to license issuance."
- If the applicant is randomly selected for re-examination of the Class E Knowledge Exams in the driver license or tax collector office and the applicant fails the random re-exam given in that office, the Third Party Administrator may voluntarily refund to the applicant the examination price received by the Third Party Administrator.
- D. **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. Applicant Data that is retained under this agreement must be stored so that only authorized users may access the information. 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 authorized persons or entities. 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, Florida Statutes.
- E. **REPORTING EXAM RESULTS:** All Class E Driving Skills Exam results are to be submitted to the Department within 24 hours of the date the Class E Driving Skills Exam was given or the next business day. Failure to submit the Class E Driving Skills Exam within the required time frame will result in termination of the Contract. The Third Party Administrator must provide proof of exam results, in a format designated by the Department, to each applicant who takes and passes the required exam,

including compliance with procedures to ensure that an applicant presenting such proof to the Department is the same person to whom the form was issued by the Third Party Administrator.

F. **EXAM CONFIDENTIALITY:** The Third Party Administrator/Examiner must keep the Department's Class E Driving Skills Exam criteria, scoring sheet and tablet confidential and not accessible to the public.

G. **TESTING PROCEDURE:**

1. An applicant may only take the Class E Driving Skills Exam one time in a 24-hour period.
2. An applicant must take the Class E Driving Skills Exam at a driver license or tax collector's office after the third failed attempt.
3. Third Party Examiners are required to maintain files for each driver to whom Class E Driving Skills Exam are administered. Driver files will be kept for three years from the date of the latest Class E Driving Skills Exam. Each driver file must include:
 1. Agreement signed by the applicant.
 2. Make/model/license plate number of vehicle used to conduct Class E Driving Skills Exams.
4. If using a vehicle with an instructor brake, it must be an automatic failure of the Class E Driving Skills Exam if the Third Party Administrator/Examiner has to use the brake for any reason.
5. The Third Party Administrator/Examiner must use a primary Class E Driving Skills Exam route or one of two alternate routes which have been approved by the Department's contract manager and accommodates the requirements of the Department's Class E Driving Skills Exam and scoring sheet. If there are any changes to the exam route, the Third Party Administrator must submit the new route to the Department's contract manager and the Department must approve the change before the new route can be used.
6. The Third Party Administrator's examiner must conduct a pre-exam inspection on all vehicles that are used for Class E Driving Skills Exams. The inspection must be performed in an off- street area that does not jeopardize the personal safety of the applicant. The Third Party Administrator's Examiner must verify that the vehicle has valid registration and insurance coverage.

SECTION IV: 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 serving as a licensing agent of the Department, pursuant to section 322.135, Florida Statutes, 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 Driving Skills 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 Driving Skills Exam that are scored on the basis of an applicant's verbal or written responses.

- C. **SOLICITATION AND ADMINISTRATION OF CLASS E DRIVING SKILLS EXAM:** The Third Party Administrator and its Third Party Examiners, employees, or agents must not solicit any individual or administer Class E Driving Skills Exam on premises rented, leased, or owned by the Department or tax collectors serving as licensing agents of the Department, including the driving route, or any parking, backing, or three-point turn route located on or off the premises of any driver license examination office or tax collector's office.
- 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 contract.
- 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;
 3. Utilize advertising that indicates, in any way, that the Third Party Administrator can issue or guarantee the issuance of a driver license or imply that the Third Party Administrator 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. Use any name in its advertising besides the name on its application and must not use the words "Department of Highway Safety and Motor Vehicles", "DMV", "DHSMV", "FLHSMV", "HSMV", "BMV" or any other words or logos that are associated with the Department of Highway Safety and Motor Vehicles in any part of its name.
- F. **PROHIBITION ON SEXUAL HARASSMENT:** Third Party Administrators and Third Party Examiners 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.

SECTION V. ADDITIONAL TERMS

- A. **CONTRACT TERM AND VALIDITY:** This agreement is for a three-year term beginning upon the date last signed 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.

- B. **PLACE OF BUSINESS:** 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.
- 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 a record of each Third Party Examiner in the employ of the Third Party Administrator. Each record must contain documentation of the status as an employee; department or other official state driver record updated at least once every six months; home address; and telephone number. 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 model.
 - 1. Any changes to the Third Party Administrator's principal place of business or mailing address must be submitted 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 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, 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, Florida Statutes. The Third Party Administrator must ensure that funds to cover all re-exam fees for license re-examination are available within 24 hours of obtaining the re-exam Class E Driving Skills Exam or be disqualified from issuing driver license exams until balance is paid in full.
 - 1. 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.
 - 2. The Third Party Administrator must submit one banking account number to the Department for the purposes of automatic debiting for the payment of transaction fees.
 - 3. 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 notify any applicant 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 three 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 three years after termination of this agreement. If an audit has been initiated and audit findings have not been resolved at the end of three 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. Requirements of Section 322.56, Florida Statutes:
 - 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. Allow the Department to re-examine a random sample of the drivers approved by the Third Party Administrator for licensure.
 - e. Reserve to the Department the right to take prompt and appropriate action against a Third Party Administrator that fails to comply with state or federal standards for a driver's license examination or that fails to comply with any terms of the 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 Contract for refusal by the 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), Florida Statutes.

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

- a) Keep and maintain public records required by the Department to perform the service.
- b) 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.

- c) 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.
- d) 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.
- e) Respond to inquiries from the Department's custodian of public records or Contract Manager, regarding public records requests by providing all information or records that the Department deems necessary to respond to such requests within three (3) working days of request from the Department's custodian of public records or Contract Manager.

Pursuant to subsection 119.0701(3), Fla. Stat., 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 may not conduct business on an expired, terminated or canceled 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 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 VI: SERVICES PROVIDED BY THE DEPARTMENT

- A. **EXAMINING AUTHORITY:** The Department agrees to permit the Third Party Administrator to administer the Class E Driving Skills 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, 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 provision 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 VII: LIABILITY AND ATTORNEY FEES

- A. The Department has no responsibility for any changes in the law 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 continuation of this agreement.
- B. It is expressly understood that the Third Party Administrator is an independent Third Party Administrator, 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, Florida Statutes.
- C. The Department will not be responsible for any attorney fees except as provided by Florida Statutes.

- D. The Department reserves the right to terminate this agreement upon determining the Third Party Administrator or Third Party Examiner in the employ of a Third Party Administrator fails to comply with the terms of this contract, including:
1. Continuously maintaining the required qualifications under this agreement during the term of this agreement;
 2. Administering Class E Driving Skills 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 Driving Skills Exams, with no unauthorized use and security breaches;
 5. Giving Class E Driving Skills Exams only to applicants who possess valid Florida learner's licenses and otherwise meet eligibility requirements defined in this contract;
 6. Maintaining strict security and accountability of Applicant Data and examination questions and answers;
 7. Conducting or behaving appropriately, with no conduct that the Department determines endangers the health, safety and welfare 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 beyond 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 the contract
 11. Complying with any term or condition of this agreement.
- E. **NOTICE:** Termination of this agreement is effected by furnishing the Third Party Administrator with written notice which must include a short and plain statement of the facts necessitating the termination. Any notice of termination must be given according to the procedures set forth in section 120.60, Florida Statutes, 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 may allow the Third Party Administrator 30 days to correct the deficiency.
- F. **OTHER TERMINATION:** In the event that section 322.56, Florida Statutes, is repealed or amended by the Legislature to remove authority for this type agreement, this agreement will terminate on the

effective date of such act. 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. The Department may unilaterally terminate this agreement for refusal of the Third Party Administrator 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 Third Party Administrator in conjunction with this agreement. The Third Party Administrator must protect the personal information of an applicant or their parent or guardian as set forth in section 119.0712(2), Florida Statutes, adopting the Driver Privacy Protection Act.

- G. This agreement is subject to immediate termination by the Department if the Third Party Administrator fails or refuses to comply with any provision of this agreement or any Florida Law.
- H. A Third Party Administrator or Third Party Examiner whose agreement is terminated is not eligible to reapply with the Department. The 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.

SECTION IX: COMMUNICATIONS

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

**REPRESENTING THE
THIRD PARTY ADMINISTRATOR:**

Name: _____
Title: _____
Address: _____
City/State/Zip: _____
Email Address: _____
Telephone: _____

REPRESENTING THE DEPARTMENT:

Name: Melissa Cueto
Title: PROGRAM CONTRACT MANAGER
Address: 2900 APALACHEE PARKWAY
City/State/Zip: TALLAHASSEE, FL 32399
Email Address: melissacueto@flhsmv.gov
Telephone: 850.617.2490

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

SECTION X: AGREEMENT AS INCLUDED ENTIRE AGREEMENT

This instrument embodies the whole AGREEMENT of the parties. 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 DEPARTMENT and the THIRD PARTY ADMINISTRATOR have executed this AGREEMENT as of the date noted on the first page of this agreement.

Third Party Administrator:

Department:

BUREAU OF PURCHASING AND CONTRACTS

By: _____
(print name and title)

LISA M. BASETT, CHIEF

FEID Number: _____

DATE