

AGREEMENT
between the
FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
and City of Clearwater, Florida, **a**
COMMERCIAL DRIVER LICENSE THIRD PARTY ADMINISTRATOR

THIS AGREEMENT is dated as of the date of the last signature by and between the FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES (hereinafter “Department”), and City of Clearwater, a Commercial Driver License Third Party Administrator, (hereinafter, “Third Party Administrator”), who are the parties to this Agreement.

WHEREAS, section 322.56, Florida Statutes, and Rule 15A-7.019, Florida Administrative Code (hereinafter, “F.A.C.”), authorize the Department to contract with entities, as defined in the statute, to perform certain duties as Third Party Administrators; and

WHEREAS, commercial driver license (CDL) skills testing is one of the duties authorized by the above-stated statute and rule to be performed by Third Party Administrators; and

WHEREAS, the Parties wish to establish the terms and conditions under which the Third Party Administrator may conduct commercial driver license (CDL) skills testing.

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

- I. **DEFINITIONS.** The following words and terms, when used in this document, shall have the following meanings:
- A. **APPLICANT:** An individual who possesses a Commercial Learners Permit (CLP) (Class A, B, or C) and is required to successfully complete the applicable CDL skills test.
 - B. **CDL SKILLS TEST:** The practical demonstrations of an applicant’s skill, knowledge and ability necessary to obtain a CDL and to safely operate a commercial motor vehicle. A CDL skills test consists of three parts: a pre-trip inspection, prescribed basic control maneuvers, and an on-road driving test. A skills test required to remove certain restrictions will include only the relevant portions of the CDL skills test as determined by the Department. A CDL skills test must be conducted only on approved testing sites and designated routes.
 - C. **CDL SKILLS TEST PROGRAM** (hereinafter “Program”): The operational activities and oversight involved in the administration of third party CDL skills testing as provided under the terms of this Agreement.
 - D. **CERTIFICATE:** A document issued by the Department authorizing the Third Party Administrator to administer a CDL skills test program.

- E. **COMMERCIAL DRIVER LICENSE (CDL):** In Florida's classified licensing system, a Class A, Class B, or Class C driver license, as required to drive commercial motor vehicles in accordance with section 322.54, Florida Statutes.
- F. **COMMERCIAL SKILLS TEST INFORMATION MANAGEMENT SYSTEM (CSTIMS):** A web-based tool that provides the Department the ability to track the scheduling and entry of test results for CDL skills tests by other jurisdictions and Third Party Testers.
- G. **DEPARTMENT:** The Florida Department of Highway Safety and Motor Vehicles.
- H. **EMPLOYEE:** A person who is employed by a Third Party Administrator and receives annually an Internal Revenue Service Form W-2.
- I. **INDEPENDENT CONTRACTOR:** A person who has a Department-approved contract with the Third Party Administrator, and receives an annual Internal Revenue Service Form 1099.
- J. **PAPERLESS WAIVER SYSTEM (PWS):** A web-based means for Third Party Testers to electronically record applicant skills test results.
- K. **RESPONSIBLE PARTY:** The person executing this agreement on behalf of the Third Party Administrator, a person who is responsible for the day to day operations of the Third Party Administrator, or any owner, manager, partner, or corporate officer of the Third Party Administrator who is directly involved in the delivery of services related to this Agreement.
- L. **TEST SITE:** Any physical location at which the Third Party Administrator is authorized to conduct CDL skills tests, as set forth in Appendix A to this Agreement.
- M. **TEST SITE NUMBER:** A number assigned by the Department to each approved test site listed in Appendix A to this Agreement.
- N. **THIRD PARTY ADMINISTRATOR:** A person, an entity of state government, a subdivision of state government, a public or private corporation, a firm, an organization, a school, or an entity of local government certified by the Department to conduct an approved Program.
- O. **THIRD PARTY ADMINISTRATOR IDENTIFICATION NUMBER (TPA ID):** A unique assigned number issued by the Department to identify the Third Party Administrator.
- P. **THIRD PARTY TESTER:** An Employee/Independent Contractor administering CDL skills tests at the direction of a Third Party Administrator.

II. ELIGIBILITY

- A. **APPLICATION:** Prior to entering into this agreement, the Third Party Administrator must submit to the Department a completed Application for Authority to Conduct Third Party Commercial 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 Responsible Party 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 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, including but not limited to alcohol and drug related offenses within the ten (10) years immediately prior to the date of this Agreement, any misdemeanor involving dishonesty or false statement, or a felony at any time.
- C. **BACKGROUND CHECK:** The Third Party Administrator, Responsible Party, each tester, and any employee or agent who has or will have access to CSTIMS or the PWS, must submit to a fingerprint-based background check performed by a “Live Scan” Provider with results provided to the Department at the time of application. The background check must be performed within 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.

III. **THE DEPARTMENT AGREES TO:**

A. **TESTING AUTHORITY:**

1. Authorize the Third Party Administrator to conduct the CDL skills tests indicated in the checkboxes below pursuant to 49 CFR 383.75, the terms of this Agreement, and applicable provisions of Chapter 322, Florida Statutes, subject to any limitations noted in Section II.A.2:
 - a. Skills (Pre-trip, Basic, Road) Tests for Class A, B, and C • (Yes) • ~~No~~
 - b. Skills (Pre-trip, Basic, Road) Tests for Class B and C • (Yes) • ~~No~~
2. Authorize the Third Party Administrator to conduct CDL skills tests for:
 - a. CDL applicants to be employed by the Third Party Administrator as commercial vehicle drivers: • (Yes) • ~~No~~
 - b. Any CDL applicant: • (Yes) • ~~No~~

- B. **TECHNICAL ASSISTANCE:** Provide training and interpretive guidance to the Third Party Administrator regarding laws, rules, and procedures for conduct of the Program established under this Agreement.

C. ADMINISTRATION AND ENFORCEMENT: Administer and enforce the provisions of this Agreement.

IV. THE THIRD PARTY ADMINISTRATOR AGREES TO:

A. LEGAL COMPLIANCE: Comply with the following provisions: 49 CFR 383.75; section 322.56, Florida Statutes; all other applicable Florida Statutes; applicable administrative rules of the State of Florida and the Department; and all applicable local ordinances.

B. PLACE OF BUSINESS: Continuously maintain a place of business that includes a permanent, regularly occupied building located within the State of Florida that meets all applicable safety and legal requirements of the federal, state, and local governments.

C. FACILITIES AND EQUIPMENT: Maintain facilities and equipment approved by the Department as follows:

1. At the Department's request, the Third Party Administrator shall provide at least one commercial vehicle designed to transport 3 or more passengers including the driver for the purpose of conducting annual co-scores of the Third Party Administrator's testers. Commercial motor vehicles used to meet requirements of this Agreement shall adhere to the following:
 - a. **Authorized to test Class A, B & C.** A truck tractor/semi-trailer combination vehicle as defined in section 320.01, Florida Statutes, designed to transport 3 or more passengers including the driver is required.
 - b. **Authorized to test Class B & C.** Any single vehicle with GVWR of 26,001 or more pounds including straight trucks and buses designed to transport 3 or more passengers including the driver is required.
 - c. **School Boards/Districts.** Any single vehicle with GVWR of 26,001 or more pounds including straight trucks and buses designed to transport 3 or more passengers including the driver is required.
2. A paved off-street area permanently marked and meeting all applicable dimensions and specifications for the basic skills portion of the CDL skills test, as provided in the most current version of the American Association of Motor Vehicle Administrators (AAMVA) model CDL Examiner's Manual. The Third Party Administrator must provide the Department with proof of ownership of the facility, or present a current binding lease of the facility with a minimum one-year term.
3. A Department-approved primary road test route, and one or more approved alternate routes.
4. Computer tablets as mandated by the Department to score driving tests and transmit skills test results in accordance with Section IV. L of this Agreement.

- D. **VEHICLES:** Ensure all vehicles driven on roads (as defined in subsection 320.01(16), Florida Statutes) meet applicable federal and state requirements. This requirement applies to all vehicles driven on roads, whether such vehicles are furnished by the Third Party Administrator or by the applicant.
- E. **DESIGNATED RESPONSIBILITIES:** Designate an individual to be responsible for general compliance with this Agreement, and an individual with specific responsibility for operations at each of the Third Party Administrator's respective test sites. The same individual may be responsible for both general compliance and operations at any single test site. However, a Third Party Tester may be designated as responsible for general compliance with this Agreement only if the Third Party Tester has an ownership interest in the Third Party Administrator.
- F. **TRAINING:** Participate in training as required by the Department pursuant to 49 CFR 384.228.
- G. **THIRD PARTY TESTERS:** Utilize at least one Third Party Tester to conduct CDL skills tests. Each Third Party Tester must have a valid certificate issued by the Department for the type(s) of CDL skills test(s) being conducted. Only those Third Party Testers who maintain current valid certificates may conduct such tests.
- H. **SCHEDULING OF SKILLS TESTS**
1. Submit a written schedule of CDL skills testing appointments to the Department no later than two business days prior to each scheduled test. The entry of a scheduled CDL skills test into CSTIMS satisfies the written notification requirement.
 2. Monitor all Third Party Tester(s) scheduled tests to ensure full compliance with the terms of this Agreement and the provisions of state and federal law.
- I. **THIRD PARTY TESTER RECORDS:** Create and maintain all records and documents required by 49 CFR 383.75. All records and documents required to be maintained pursuant to 49 CFR 383.75, must be immediately available and accessible to the Department upon request. This includes creation and maintenance of a record of each Third Party Tester working for the Third Party Administrator. In addition, the Third Party Administrator shall ensure the following:
1. Each record shall contain documentation of the Third Party Tester's current certification by the Department, employee/independent contractor status, current official state driver record, home address, email address, and telephone number.
 2. The Third Party Administrator must review and update the Third Party Tester driver records at least every six months while the Tester is authorized to administer CDL skills tests at the direction of the Administrator. The Administrator must ensure that each Third Party Tester maintains a valid Commercial Driver License at any time they are authorized to administer CDL skills tests.

3. The Third Party Administrator must maintain records relating to supervision of its Third Party Testers and the conduct of administration of the CDL skills test.
 4. Each record shall be maintained for at least three years after the date the Third Party Tester no longer administers the CDL skills test at the direction of the Third Party Administrator.
- J. **SKILLS TEST CONDUCT:** Create, maintain, and implement a system of oversight and supervision designed to reasonably ensure that each skills test is conducted strictly in accordance with the specifications and procedures prescribed by the Department, as set forth in applicable provisions of Rule 15A-7.012, F.A.C., and the current version of the AAMVA Model CDL Examiners Manual. Each system shall include, at a minimum:
1. Written supervisory procedures and policies;
 2. Annual written certification from Third Party Testers that they understand and have complied with all policies and regulations relating to conducting CDL skill tests;
 3. Unannounced and periodic inspections of each Third Party Tester's activities by the person designated in the application as being responsible for the Third Party Administrator's compliance with this Agreement; and
 4. A requirement for a full investigation of complaints or indications of non-compliance with this Agreement and/or any applicable regulations.
- K. **APPLICANT RECORDS MAINTENANCE:** Maintain for a minimum of three years, at the approved test site, all records of each applicant for whom the Third Party Administrator or its tester(s) conducts any portion of the CDL skills test, whether the applicant passed or failed the test(s).
- L. **PROOF OF RESULTS:** Ensure that all Third Party Testers employed by the Third Party Administrator accurately record the results of all tests they personally conduct in the Department's PWS and CSTIMS, by the first business day following administration of the test, whether the applicant passes or fails.
- M. **SECURITY OF PROGRAM MATERIALS AND COMPUTER TABLETS:** Maintain strict security and accountability for confidential test materials provided by the Department and all computer tablets used to administer and score the CDL skills examination.
- N. **ANTI-DISCRIMINATION AND ACCOMMODATING APPLICANTS WITH SPECIAL NEEDS:** Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq., 78 stat. 252). Comply with sections 553.501 - 553.513, Florida Statutes, and ensure reasonable accommodations to applicants needing special services to include providing American Sign Language interpreters, as necessary, at the Third Party Administrator's cost.

O. COMPLIANCE MONITORING SUPPORT:

1. Permit Department or Federal Motor Carrier Safety Administration (FMCSA) representatives to conduct all monitoring activities required by section 322.56, Florida Statutes, and 49 CFR 383.75.
2. Permit unscheduled access to and inspection of test site(s), vehicles used for testing, Third Party Tester records, and applicant records as specified in this Agreement, by Department or FMCSA representatives.
3. Permit the Department, or its representative, to conduct random examinations, inspections, and audits without prior notice.
4. Permit Department and FMCSA representatives to observe any part of any applicant's testing.
5. Refund or waive test fees charged to FMCSA or Department representatives who may pose as applicants for purposes of monitoring compliance with this Agreement.
6. Permit the Department to test, at least annually, at the Third Party Administrator's cost, a sample of applicants approved by the Third Party Administrator for licensure, as required by subsections 322.56 (3)(e) and (4), Florida Statutes.

P. CERTIFICATES: Maintain a copy of the authorized Third Party Administrator Certificate at all test site(s).

Q. MISCELLANEOUS NOTIFICATIONS: Notify the Department in writing or email:

1. Within five (5) business days of the Third Party Administrator, Responsible Party, or employee or agent who has or will have access to CSTIMS or the PWS, being charged, convicted of, or pleading guilty or no contest to a felony.
2. Within one (1) business day of a lapse in commercial automobile, commercial liability, or employee/independent contractor's compensation insurance.
3. Within one (1) business day of a lapse of the performance bond.
4. At least thirty (30) calendar days in advance of any change of 10% or more of ownership.
5. No less than thirty (30) calendar days prior to any change in the Third Party Administrator's business or agency name, or address.
6. Within ten (10) calendar days of changes of the individual(s) designated to represent the Third Party Administrator as specified in Section III. E.
7. Within ten (10) calendar days of changes of Third Party Testers administering CDL skills tests at the direction of the Third Party Administrator.
8. At least ten (10) calendar days in advance of the date the Third Party Administrator will cease business operations at a test site.

9. Within ten days (10) calendar days of revision of the Third Party Administrator's established testing fees.
10. Within five (5) calendar days of known or suspected acts or omissions by any employee/independent contractor that violate the terms of this Agreement.

R. INDEMNIFICATION: Indemnify the state of Florida and the Department:

1. The Third Party Administrator agrees to indemnify, hold, and save the state of Florida, and the Department and its officers, agents, contractors and employees (collectively, also referred to herein as the Department), whole and harmless and, at the Department's option, will defend same from and against all claims, demands, actions, damages, loss, costs, liabilities, expenses and judgments of any nature or kind whatsoever recovered from or asserted against the Department on account of injury or damage to persons or property to the extent that any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by any act, omission, negligence or misconduct on the part of the Third Party Administrator or any of its agents, Third Party Testers, employees/independent contractors, contractors, licensees, invitees, or any other person in the performance of the obligations imposed or acts authorized by this Agreement.
2. The Third Party Administrator covenants and agrees that in case the Department is made party to any litigation against the Third Party Administrator, then the Third Party Administrator shall and will pay all costs and expenses, including reasonable attorney's fees and court costs, incurred by or imposed upon the Department because of any such litigation.
3. These terms of indemnification shall be effective unless such damage or injury occurred from the sole negligence, gross negligence or willful misconduct of the Department.
4. This indemnification shall survive termination or expiration of this Agreement and is applicable to the fullest extent provided by law.

S. TESTING FEES: Ensure that if the Third Party Administrator charges fees for testing services:

1. The fees are posted to Third Party Administrator's website, if they maintain a website;
2. The posted fees are paid directly to the Third Party Administrator;
3. The applicant is issued a receipt for payment in the name of the Third Party Administrator that itemizes the test fees separately from other fees charged; and
4. A copy of the receipt is retained with the applicant's testing records.

T. PUBLIC RECORDS: When acting on behalf of the Department, in addition to all other conditions of this Agreement:

1. Keep and maintain public records required by the Department to perform the services described in this Agreement.

2. Notify the Department within five (5) business days of receipt of any public records request.
3. 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, attached as Exhibit B, or as otherwise provided by law.
4. 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 Agreement term, and following completion of the Agreement term, if the Third Party Administrator does not transfer the records to the Department.
5. Upon termination, cancellation, or expiration of the Agreement, transfer to the Department, at no cost to the Department, all public records in possession of the Third Party Administrator or keep and maintain the public records required by the Department to perform the service.
 - a. Upon the transfer of all public records to the Department upon termination, cancellation, or expiration of the Agreement, the Third Party Administrator shall destroy any duplicate public records that are exempt or confidential and exempt from public records requirements.
 - b. If the Third Party Administrator keeps and maintains public records upon termination, cancellation, or expiration of the Agreement, the Third Party Administrator shall meet all applicable requirements for retaining public records.
 - c. All records stored electronically must be provided to the Department, upon request from the Department in a format that is compatible with the information technology systems of the Department.
6. Respond to inquiries from the Department 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.
7. Pursuant to subsection 119.0701(3), Florida Statutes, in the event the Third Party Administrator fails to comply with a public records request, the Department will enforce all Agreement provisions related to public record requests by assessing the following:
 - a. First violation - \$100 penalty.
 - b. Second violation - \$250 penalty.
 - c. More than two (2) violations - \$500 penalty and/or possible termination of this Agreement, depending upon the nature of the noncompliance.
8. **IF THE THIRD PARTY ADMINISTRATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA**

**STATUTES, TO THE THIRD PARTY ADMINISTRATOR'S
DUTY TO PROVIDE PUBLIC RECORDS RELATED TO THIS
AGREEMENT, 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.**

- U. CDL SKILLS TEST PREPARATION AND TRAINING: Ensure that no portion of a CDL skills test (pre-trip inspection, basic skills, or road test) is administered to an applicant on the same day as training is provided.
1. This includes any presentation of learning materials, or guided practice conducted or made available to the applicant by the Third Party Administrator.
 2. Nothing in this section precludes applicants from self-directed study and practice on the same day as their CDL skills testing.
 3. Third Party Testers may not administer any portion of the CDL skills test to an applicant they trained.
- V. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM: Utilize the U.S. Department of Homeland Security's E-Verify system.
1. As required by federal law, the Third Party Administrator must use the U.S. Department of Homeland Security's E-Verify system to verify the status of all new employees/independent contractors hired by the Third Party Administrator during the term of this Agreement.
 2. The Third Party Administrator must include in related subcontracts a requirement that subcontractors performing work or providing services utilize the E-Verify system to verify status of all new employees/independent contractors hired by the subcontractor during the contract term.
- W. CONVICTED VENDOR LIST: Inform the Department immediately if, at any time during the Agreement term, the Third Party Administrator is placed on the state-maintained Convicted Vendor List. No person or entity appearing on the Department of Management Services' maintained Convicted Vendor List (as defined in section 287.133, Florida Statutes) may be awarded a contract or perform work as a contractor, supplier, subcontractor, or consultant with any public entity, or transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for a period of 36 months from the date placed on

the convicted vendor list. The Third Party Administrator agrees to check this list prior to engaging in any of the activities set forth in this Agreement.

X. **COOPERATION WITH INSPECTOR GENERAL:** Cooperate, and ensure that its subcontractors, if any, cooperate with the Department's Inspector General in any investigation, audit, inspection, review, or hearing involving the subject matter of this Agreement, pursuant to subsection 20.055(5), Florida Statutes.

V. **COMPLIANCE AND ENFORCEMENT:** The Department may impose penalties for Third Party Administrator non-compliance with the terms of this Agreement as follows:

A. **ADMINISTRATIVE NON-COMPLIANCE:** Failure to meet requirements for scheduling, reporting, notifications, record keeping, and similar acts that do not compromise testing integrity or public safety.

1. First Occurrence: Written warning
2. Subsequent occurrence: Thirty (30) day suspension of testing authority at applicable test site(s)

B. **MINOR TEST PROCEDURE DISCREPANCY:** A minor discrepancy in test procedure is the failure to properly administer a required portion of an otherwise complete test procedure, such as omission of a required maneuver, failure to conduct the skills test in order as required by 49 CFR 383.133, or any other action the Department determines might undermine confidence in the thoroughness of the test process.

1. First Occurrence: Ten (10) day suspension of testing authority at applicable test site(s)
2. Subsequent Occurrence: Thirty (30) day suspension to termination of testing authority at applicable test site(s)

C. **MAJOR TEST PROCEDURE DISCREPANCY:** A major discrepancy in test procedure is the failure to substantially provide a skills test, such as omission of the pre-trip inspection, failure to use an approved test route, use of unsafe vehicles for testing applicants, or any other action the Department determines compromises the integrity of the testing process or public safety.

1. First Occurrence: Forty-five (45) day suspension of testing authority at applicable test site(s)
2. Subsequent Occurrence: Termination of testing authority at applicable test site(s)

D. **FRAUD:** Fraud includes falsification of any records, material misrepresentations or omissions of facts, etc.

1. First Occurrence: Termination of this Agreement

E. The Department will determine in its sole discretion whether a violation is minor or major and the applicable penalties. Nothing in this section limits application of provisions for termination or cancellation of this Agreement under Section V. of this Agreement where deemed appropriate.

VI. TERM OF CONTRACT: This Agreement shall remain in effect for four (4) years from the date it is signed by all parties, unless earlier canceled, suspended, or terminated as herein provided.

A. NEW AGREEMENT:

1. The Department may immediately require the execution of a new Agreement in the event the Department determines, in its sole discretion, significant changes have occurred to the Third Party Administrator.
2. "Significant changes" include:
 - a. Change in the Third Party Administrator's organizational structure resulting in issuance of a new Federal Employer Identification Number;
 - b. Change in Third Party Administrator ownership;
 - c. Change in the Third Party Administrator's test sites; and
 - d. The Third Party Administrator, or Responsible Party being charged, convicted of, or pleading guilty or no contest to, a felony.

B. SUSPENSION:

1. The Department may immediately suspend the Third Party Administrator's testing authority at one or more test sites in accordance with Sections V.A, V.B, or V.C, of this Agreement.
2. The Department will provide the Third Party Administrator written notification of the suspension as soon as practicable, and will cancel the Third Party Administrator's access to the PWS and CSTIMS for the duration of the suspension, when applicable.

C. CANCELLATION: Either party to this Agreement may cancel this Agreement for any reason by providing sixty days' written notice of cancellation to the other party.

D. TERMINATION: This Agreement may be terminated as follows:

1. At any time, without cause, upon mutual written agreement of the Parties.
 - a. The termination date will be mutually agreed upon by the parties and included in the termination agreement.
 - b. In the event of such termination, the Third Party Administrator shall continue to be bound by the terms and conditions of this Agreement related to public records.
2. At any time, if the Department determines that continued performance by the Third Party Administrator would endanger the public health, safety, or welfare, or if to do so is in the best interest of the state of Florida.
3. By the Department for cause. The Department will issue a Notice of Breach describing the reason(s) for the impending termination. Reasons may include, but are not limited to the following:

- a. Failure by the Third Party Administrator or Third Party Tester to comply with or satisfy any of the provisions of this Agreement;
 - b. Upon any lapse of commercial automobile, commercial liability, or workers' compensation insurance;
 - c. Falsification of any record or of information required under this Agreement;
 - d. Administrative, civil, or criminal action against the Third Party Administrator;
 - e. Failure by the Third Party Administrator or Third Party Tester to comply with state or federal standards for a driver license examination;
4. The Department may, but is not required to, grant the Third Party Administrator up to thirty (30) days to correct deficiencies to the Department's satisfaction. If all reasons listed by the Department in the Notice of Breach are not satisfactorily corrected, the Department will provide a final written Notice of Termination to the Third Party Administrator.
 5. Except when the Department, in its sole discretion, determines advance notice would result in further harm to either the Department or the public, the Department will provide the written notice to the Third Party Administrator at least thirty (30) days prior to termination.

VII. APPLICABILITY OF CHAPTER 120, FLORIDA STATUTES.

- A. The Administrative Procedures Act, Chapter 120, Florida Statutes, will govern actions of the Department regarding the suspension or termination of the Third Party Administrator's testing authority or termination of this Agreement as herein provided.
- B. For purposes of timely action in accordance with section 120.60, Florida Statutes, an application for certification as a Third Party Administrator or Third Party Tester includes all completed forms, fees, and supporting documents required for Agreement approval and will be considered to have been submitted on the date all such items are received by the Department.

VIII. FEES AND NOTIFICATIONS TO APPLICANTS

- A. POSTING OF FEES: Any fee charged by the Third Party Administrator for tests conducted pursuant to this Agreement must be prominently posted¹ at each third party test site(s) and on the Third Party Administrator's website, as applicable.
 1. Each testing fee must be listed separately from any bundle or package pricing.
 2. Any fee for tests conducted pursuant to this Agreement must be uniformly charged to all applicants.

¹ For purposes of this Agreement, "prominently posted" means physically displayed or placed in an area accessible to the public in a manner that ensures visibility and readability.

3. Neither the Third Party Administrator nor any of its Third Party Testers, or their representatives, may solicit or accept a gratuity above or in addition to a posted testing fee, without regard to the form of the gratuity.

B. **ADDITIONAL INFORMATION TO BE POSTED:** The Third Party Administrator must prominently post at its test site(s) the following information:

1. A statement that payment of any fees to the Third Party Administrator will not affect fees the applicant must pay to the Department for issuance of a CDL.
2. A statement that the Department may, in its sole discretion, require a retest of any applicant without regard to the electronic results submitted to the Department.
3. A statement that the Third Party Administrator does not issue and cannot guarantee issuance of a CDL, nor in any way may influence the Department regarding issuance of a CDL.

IX. PROFESSIONAL CONDUCT

A. **PROHIBITED HIRING PRACTICES:** The Third Party Administrator may not employ or otherwise engage the services of any current employee of the Department, or of a county tax collector serving as a licensing agent of the Department.

B. **APPLICANT ASSISTANCE:** The Third Party Administrator may not assist an applicant in passing the CDL skills tests administered pursuant to this Agreement. An applicant may not use the services of a translator or other intermediary to interpret portions of the tests that are scored on the basis of an applicant's verbal or written responses.

C. **SOLICITATION:** No Third Party Tester, employee/independent contractor, agent, or other representative of the Third Party Administrator may solicit any individual or post advertisements within 200 feet, on premises rented, leased, or owned by the Department or any of its agents, including county tax collectors.

D. **CONFLICT OF INTEREST:** The Third Party Administrator's Third Party Tester(s) may not administer tests under this Agreement for anyone with whom the Third Party Administrator or Third Party Tester may have a conflict of interest as defined by Chapter 112, Florida Statutes.

1. The Department will determine in its sole discretion whether this prohibition applies to an applicant.
2. Upon written request from the Third Party Administrator, the Department will provide an advanced determination of the applicability of this prohibition to a particular applicant.

X. ADVERTISING

A. **GUARANTEES:**

1. The Third Party Administrator shall not state, suggest or imply in writing, verbally, or in any advertisement that the Third Party Administrator can issue or guarantee that an applicant will pass the skills tests or will be issued a CDL.
2. The Third Party Administrator shall not state, suggest, or imply in writing, verbally, or in any advertisement that the Third Party Administrator can influence or affect the Department's decision regarding issuance of a CDL.
3. The Third Party Administrator shall not state, suggest, or imply in writing, verbally, or in any advertisement that the Third Party Administrator can obtain preferential or advantageous treatment from the Department for any applicant.

B. ENDORSEMENTS: The Third Party Administrator shall not state, suggest, or imply that its program is approved, sanctioned, or endorsed by the Department, except to say it is "certified."

C. BUSINESS NAME: The Third Party Administrator shall not use any name in its advertising other than the name set forth above in this Agreement, and shall not use the word "State" unless the Third Party Administrator is a state or government agency.

D. FALSE STATEMENTS: The Third Party Administrator shall not use any advertisements which include materially false or misleading statements.

XI. INSURANCE FOR NON-GOVERNMENTAL ENTITIES. All Third Party Administrators that are not entities of state or local government or local school districts must provide proof of the following:

A. COMMERCIAL AUTOMOBILE LIABILITY: The Third Party Administrator shall secure and maintain Commercial Automobile Liability insurance pursuant to the provisions of subsection 320.02(5)(a), Florida Statutes, on all vehicles owned or leased by the Third Party Administrator and used for testing applicants.

1. This insurance shall include Hired and Non-Owned Liability coverage for all claims that may arise from all operations under this Agreement, whether such operations are by the Third Party Administrator or its agents, Third Party Testers, employees/independent contractors, or applicants using the vehicle at the time of administering a test.
2. OTHER VEHICLES: If the Third Party Administrator permits its Third Party Tester(s) to use applicant vehicles for conducting road tests, it must ensure prior to the test that each such vehicle is in compliance with the Motor Vehicle No-Fault Law, and has the required coverage of \$10,000 for Personal Injury Protection and \$10,000 Property Damage Liability coverage as required by subsection 324.021(7), Florida Statutes.

B. COMMERCIAL GENERAL LIABILITY: The Third Party Administrator shall secure and maintain Commercial General Liability insurance appropriate to the subject matter of this Agreement.

1. This insurance will provide coverage for all claims that may arise from operations performed under this Agreement by the Third Party Administrator, Third Party Tester(s), or other agents or employees, or independent contractors.
2. The insurance shall indemnify the Department and must include the state of Florida as an additional named insured for the term of the Agreement.
3. The policy shall provide the following minimum liability limits:
 - a. \$1,000,000 each occurrence
 - b. \$2,000,000 aggregate

C. WORKERS COMPENSATION: The Third Party Administrator shall secure and maintain Workers Compensation Insurance as required by Chapter 440, Florida Statutes.

1. This coverage must be maintained throughout the term of this Agreement.
2. The policy shall provide the following minimum liability limits:
 - a. \$100,000 each accident
 - b. \$500,000 policy limit
 - c. \$100,000 each employee/independent contractor

D. PERFORMANCE BOND:

1. In accordance with 49 CFR 383.75, during the term of this Agreement, the Third Party Administrator shall secure and maintain a Performance Bond guaranteeing that all Agreement terms and conditions and other requirements will be fulfilled.
2. A bond meeting this requirement must explicitly reflect the following in the language of the bonding document or incorporate the statements below by specific reference to this section:
 - a. The amount of the bond will be determined by the number of passed road tests the Third Party Administrator conducts annually. The bond required will be determined by the number of passed road tests actually conducted during the immediate past year as verified by the Department.
 - i. The bond amount for a Third Party Administrator who administers up to 100 passed road tests annually shall be \$100,000.
 - ii. The bond amount for a Third Party Administrator who administers 101 – 550 passed road tests annually shall be \$500,000.
 - iii. The bond amount for a Third Party Administrator who administers 551 or more passed road tests annually shall be \$1,000,000.
3. The bond will obligate payment of valid claims to the Department.
4. The insurance company providing the performance bond must be included on the U. S Treasury's most current Listing of Approved Sureties.

5. The Department may make a valid claim against the bond if the Third Party Administrator's failure to comply with any of the terms and conditions of this Agreement will result in defined costs to the Department or to affected CDL applicants.
 - a. Defined costs include, but are not limited to:
 - i. Compensation of drivers required to be retested,
 - ii. Department administrative costs, and
 - iii. Department legal costs.
6. Criminal prosecution is not required for the Department to make a claim against the bond.
7. The Third Party Administrator's failure to maintain a performance bond meeting the requirements set forth in this section will constitute cause to terminate this Agreement.
8. 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.

E. ADDITIONAL REQUIREMENTS:

1. Pursuant to Chapters 624 and 626, Florida Statutes, all insurance shall be purchased and signed by the insurer and by a properly licensed resident or nonresident agent.
2. Required insurance policies must be provided by an insurance company holding a current Certificate of Authority issued by the Florida Office of Insurance Regulation, and having a minimum of three (3) years' experience in writing, underwriting and servicing insurance in the state of Florida, and that is a member of the Florida Insurance Guarantee Association.
3. The Third Party Administrator must provide the Department with a certificate of insurance for each required policy.
4. All required policies must contain a provision obligating the insurer to notify the Department at least 30 days prior to cancellation.
5. Insurance coverage required by this Agreement shall include a loss payable clause in favor of the Department, naming the Department as a co-insured or as a beneficiary of the coverage.

XII. AMENDMENTS

A. NECESSARY AMENDMENTS: The Department may amend this Agreement, and the Third Party Administrator agrees to accept and execute any such amendment, if

1. The amendment is in writing,
2. The amendment is required by a change in state or federal law, or
3. The amendment is required by the Department in the best interest of the state of Florida.

B. OTHER AMENDMENTS: Except as otherwise provided herein, this Agreement may be amended only in writing agreed to by the parties, signed by a duly authorized representative of each party.

1. No verbal representation, interpretation, or commitment, made either before or after the execution of this Agreement, by the Third Party Administrator, its Third Party Tester(s), its agents, or any employee/independent contractor, or by any officer, agent, representative, or employee/independent contractor of the Department, shall affect or modify any of the provisions in the Agreement, unless the representation, interpretation, or commitment is expressly stated in writing and signed by a duly authorized representative of each party.

XIII. NON-ASSIGNABILITY. This Agreement and the Third Party Administrator's certification are not assignable by the Third Party Administrator, including by subcontract, either in whole or in part.

XIV. 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:

Name:	<u>Lance Kielich</u>	Name:	<u></u>
Title:	<u>Fleet Operatins Trainer</u>	Title:	<u></u>
Address:	<u>1900 Grand Avenue</u>	Address:	<u></u>
City/State:	<u>Clearwater, FL 33765</u>	City/State:	<u></u>
Email:	<u>lance.kielich@myclearwater.com</u>	Email:	<u></u>
Telephone:	<u>727-562-4890</u>	Telephone:	<u></u>
Fax:	<u>727-562-4895</u>	Fax:	<u></u>

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement this _____ day of _____, 20____.

Signature:	<u><i>Lance Kielich</i></u>	Signature:	<u></u>
By:	<u>Lance Kielich</u>	By:	<u></u>
Name:	<u>City of Clearwater</u>	Name:	<u>Department of Highway Safety and Motor Vehicles</u>
Title:	<u>Fleet Operations Trainer</u>	Title:	<u>Chief of Purchasing and Contracts</u>

APPENDIX A

APPROVED TEST SITES

UNDER TPA IDENTIFICATION NUMBER BI4

FOR THE THIRD PARTY ADMINISTRATOR

City of Clearwater

Test Site Number BI4/1 for Third Party Administrator:

City of Clearwater
Name of Organization

TPA ID # BI4 Contract Date _____ ☐ Private ☒ Government

Site Address:

1900 Grand Avenue
Mailing Address Street or P.O. Box

Clearwater 33765 Pinellas
City Zip Code County

Location Address if different from mailing address

City Zip Code County

Telephone Number 727-562-4890 Fax Number 727-562-4895

Designated Agents for Test Site Communications and Compliance

Lance Kielich Fleet Operations Trainer
Print name and Title

lance.kielich@myclearwater.com
Email Address

For the Department of Highway Safety and Motor Vehicles

TBA, Monitor for Zone 3
Print name

Approved Testing Activities at Site:

CDL Tests

☒ CDL Skills, Class A, B and C ☐ CDL Skills, Class B and C

Site Status:

Date approved: _____ by DHSMV Compliance Officer: TBA

Date closed: _____

Test Site Number BI4/2 for Third Party Administrator:

City of Clearwater
Name of Organization

TPA ID # BI4 Contract Date _____ ☐ Private ☒ Government

Site Address:

3290 SR 580
Mailing Address Street or P.O. Box

Safety Harbor 34695 Pinellas
City Zip Code County

Location Address if different from mailing address

City Zip Code County

Telephone Number 727-562-4890 Fax Number 727-562-4895

Designated Agents for Test Site Communications and Compliance

Lance Kielich Fleet Operations Trainer
Print name and Title

lance.kielich@myclearwater.com
Email Address

For the Department of Highway Safety and Motor Vehicles

TBA, Monitor for Zone 3
Print name

Approved Testing Activities at Site:

CDL Tests

☒ CDL Skills, Class A, B and C ☐ CDL Skills, Class B and C

Site Status:

Date approved: _____ by DHSMV Compliance Officer: _____ TBA

Date closed: _____