

AGREEMENT

between the

**FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
and THE SCHOOL BOARD OF BROWARD COUNTY, 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 The School Board of Broward County, Florida, 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. To the extent permitted by law, 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. For Third Party Administrators who are state agencies or subdivisions as defined in Section 768.28(2), Florida Statutes, this provision is subject to the limits of Section 768.28, Florida Statutes, and does not waive any defense of sovereign immunity or increase the limits of liability for those entities, as set forth in Section 768.28(19), Florida Statutes.
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 as a “contractor” as defined in Section 119.0701(1)(a), Florida Statutes, 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 Appendix 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.

Third Party Administrators who are governmental entities recognize and acknowledge that any agency having custody of records made or received in connection with the transaction of official business remains responsible for responding to public records requests for those records in accordance with Chapter 119, Florida Statutes, and that public records that are exempt or confidential from public records disclosure requirements will not be disclosed except as authorized by law.

- 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.
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.

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.

- 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>Barrett T. Goldman</u>	Name:	<u>Kay Blake</u>
Title:	<u>Assistant Director</u>	Title:	<u>Executive Director</u>
Address:	<u>20251 Stirling Road</u>	Address:	<u>3831 N.W. 10th Avenue</u>
City/State:	<u>Pembroke Pines, Florida 33332</u>	City/State:	<u>Oakland Park, Florida 33309</u>
Email:	<u>Barrett.goldman@browardschools.com</u>	Email:	<u>Kay.blake@browardschools.com</u>
Telephone:	<u>754-321-3900</u>	Telephone:	<u>754-321-4400</u>

Fax: 754-321-3940

Fax: 754-321-4436

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

Signature: (see next page for signature)

Signature: _____

By: _____

By: _____

Name: _____

Name: _____

Department of Highway Safety and
Motor Vehicles

Title: _____

Title: _____

Chief of Purchasing and Contracts

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By _____

ATTEST:

Nora Rupert, Chair

Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:

Office of the General Counsel

[THIS SPACE INTENTIONALLY LEFT BLANK; APENDIX A FOLLOWS]

APPENDIX A

APPROVED TEST SITES

UNDER TPA IDENTIFICATION NUMBER _____

FOR THE THIRD PARTY ADMINISTRATOR

Test Site Number _____ for Third Party Administrator:

Name of Organization

TPA ID # _____ Contract Date _____ Private Government

Site Address:

Mailing Address Street or P.O. Box

City Zip Code County

Location Address if different from mailing address

City Zip Code County

Telephone Number _____ Fax Number _____

Designated Agents for Test Site Communications and Compliance

Print name and Title

Email Address

For the Department of Highway Safety and Motor Vehicles

_____, Monitor for Zone _____

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: _____

Date closed: _____

Test Site Number _____ for Third Party Administrator:

Name of Organization

TPA ID # _____ Contract Date _____ Private Government

Site Address:

Mailing Address Street or P.O. Box

City Zip Code County

Location Address if different from mailing address

City Zip Code County

Telephone Number _____ Fax Number _____

Designated Agents for Test Site Communications and Compliance

Print name and Title

Email Address

For the Department of Highway Safety and Motor Vehicles

_____, Monitor for Zone _____
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: _____

Date closed: _____

<p>SUBJECT PROVIDING RECORDS TO THE PUBLIC</p>	<p>POLICY NUMBER 9.03</p>	
<p>POLICY MAINTENANCE ADMINISTRATOR: General Counsel</p>		
<p>PURPOSE/SCOPE: This policy outlines policies and responsibilities and describes procedures for providing access to public records. These guidelines compliment, but do not replace, the requirements under the Public Records Laws.</p>		

I. AUTHORITY

[Article I, Section 24, Florida Constitution](#)

Section [112.218](#), Florida Statutes, Personnel Files; Fees for Copies

Chapter [119](#), Florida Statutes, Public Records

Section [316.066](#), Florida Statutes, Written Reports of Crashes

Section [319.25\(2\)](#), Florida Statutes, Cancellation of Certificates

Section [320.05](#), Florida Statutes, Records; Inspection Procedure

Section [320.865](#), Florida Statutes, Maintenance of Records

Section [321.23](#), Florida Statutes, Public Records; Fees for Copies

Section [322.20](#), Florida Statutes, Destruction of Records

Chapter [324](#), Florida Statutes, Financial Responsibility

Governor’s Executive Order 07-01, Establishment of Office of Open Government, Effective January 2, 2007

II. DEFINITIONS

A. 3-Year Record - Driver history information pertaining to the last three years. The driver's personal information is not part of the driver history.

<p>Executive Director SIGNED ORIGINAL ON FILE</p>	<p>Effective Date 01/15/1988</p>
<p>Page 1 of 19</p>	<p>Revision Date August 23, 2011</p>

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- B. 7-Year Record - Driver history information pertaining to the last seven years. The driver's personal information is not part of the driver history.
- C. Actual Cost of Duplication - The cost of the materials and supplies used to duplicate the record, not including labor or overhead costs associated with such duplication.
- D. Confidential - Public records that have been identified in the Florida Statutes as confidential. The information in these records is not subject to inspection by the public and may be released only to the persons and entities designated by statute.
- E. Driver History Transcript - Driver history information produced in a standard format on paper, magnetic media or using electronic access.
- F. Driver Privacy Protection Act (DPPA) - This refers to the Federal Driver's Privacy Protection Act of 1994, which prohibits disclosure of information of a sensitive, personal nature, with noted exceptions. These exemptions are now found under Sec. 119.0712(2), F.S.
- G. E-mail - Electronic mail used to convey information.
- H. Exemplified Record - Driver history information pertaining to all information stored on the driver file.
- I. Exempt Records - Those public records that have been identified in Florida Statutes as exempt from public inspection.
- J. Extensive Use - Any public records request that requires more than thirty minutes of department resource time to fulfill.
- K. Motorist Services Record - Record pertaining to a motor vehicle operator's license, motor vehicle title, motor vehicle registration or identification card issued by the department.
- L. Network Provider - Those business entities, approved by the department, that have a direct connection to a port on the system installed to provide public access to specified department databases.
- M. Personal Information in a Motorist Services Record - Information that identifies an individual, including an individual's social security number, driver identification number or identification card number, name, address, telephone number, medical or disability information and emergency contact information contained in

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a record pertaining to a motor vehicle operator's license, motor vehicle title, motor vehicle registration or identification card issued by the department. It does not include information relating to vehicular crash data (such as the occurrence of a crash, speed, location, vehicle type, etc.), driving violations and driver's license status.

- N. Public Record - All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, regardless of physical form, characteristics or means of transmission, made or received by the department pursuant to law or ordinance or in connection with the transaction of official business.
- O. Record Owner - The division within the department which is responsible for the collection, processing, reporting, and distribution of the records.
- P. Redact - To remove or conceal from a copy of an original public record, or to remove or conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information.
- Q. Remote Electronic Access - The ability of an individual or business to enter selected Information Systems Administration (ISA) databases, via online connection (either leased-line or dial-up) and obtain records within that database. This access is interactive (the requester asks for a specific single record, based on defined parameters, which is immediately located within the database and transmitted to the requester) and requires the requester to remain in contact with the computer until all requests have been satisfied.
- R. Routine/Non-Routine Requests - Routine requests are requests that come in directly to the department that are handled as normal job duties. Non-routine is when a request involves extensive use of a member's time, more than one division's response, or is a complicated request.
- S. Special Processing - Development of computer programs and use of information resource technology assets to provide information not available in the standard reports normally processed.
- T. Special Service Charge - A reasonable service charge assessed by the department based on the cost actually incurred for the extensive use of information technology resources and/or extensive clerical or supervisory assistance, using the hourly rate of pay (or overtime rate of pay, if applicable) of personnel necessary for fulfilling the request. If supervisory resources are provided by an attorney, the charge will be at the lowest attorney rate (salary and benefits) in the Office of General Counsel.

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III. POLICY

Department records, except those specifically precluded from disclosure by statutory exemption, shall be available, in any form and format used by the agency, to all persons for inspection or copying under the supervision of the records custodian or designee during normal business hours.

The widest possible access to existing public records is encouraged by making copies of those records available for a fee not to exceed the actual cost of duplication unless a different fee is otherwise required by Florida Law. If the nature or volume of public records requested to be inspected, examined, or copied requires extensive use of department resources, the additional costs to cover such extensive use of department resources may be charged.

As future technology resources are used to manage, store, or maintain public records, the department must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.

IV. ROLES AND RESPONSIBILITIES

- A. The Executive Director shall designate a member to serve as the agency's public record/open government contact. That member will be responsible for complying with public records/open government requests and compliance at the department and will also be the primary liaison between the department and the Governor's Office of Open Government for purposes of training and compliance.
 - 1. Each division will appoint a division coordinator to coordinate requests for providing public records owned by that division. Each division will provide the public records/open government contact with the name of its appointee. In addition, designated offices and each division shall have persons named as points of contact, who shall be responsible for handling and responding to public records requests for which that office or division is the custodian. The names and contact information for these points of contact may be found on the department's public web site under the public records link (<http://www.flhsmv.gov/html/records.html>). Regular mail and e-mail public records requests may be referred to these points of contact for handling by the public records/open government contact or the division coordinator.
 - 2. The General Counsel's Office will establish and maintain an e-mail account for public records requests.

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3. The public records/open government contact and division coordinators shall make certain that all requests are handled promptly and in accordance with laws.
4. The public records/open government contact or the division coordinator must ensure that if an exemption applies to a part of a record requested, that portion of the record to which an exemption applies is redacted, and the remainder of such record is available for inspection and copying.
5. Each division and the Office of General Counsel, the Inspector General, Personnel Services, Administrative Services and Information Services shall designate no more than three individuals within an office or division, who will be trained in searching the e-mail archiving system for the purpose of responding to public records requests, including the redaction of exempt information contained in those records. Public records e-mail requests shall be referred to such individuals for handling according to this procedure and Management [Policy 9.04](#), Records Management.

V. PROCEDURES

- A. The department must accept requests for public records in writing, by e-mail, by telephone, by facsimile, or in person. If the request is insufficient to identify the records sought, the provider should help the requester clarify the request. The provider may ask the requester to complete forms to assist in defining the facts necessary for completing records requests; however, unless specifically required by law, the requestor is not obligated to complete these forms as a condition for obtaining the public records requested.
- B. Upon receipt of a public records request, the public records/open government contact or division coordinator or their designee shall acknowledge receipt within two business days. Exceptions to this are only allowed when the records request is routine and will be completed in accordance with division policy and procedure. (See Attachment C on page 18 for standard language to acknowledge receipt.)
- C. The public records/open government contact or division coordinator will determine whether the request is routine and can be handled immediately, or will require additional time. If routine, the contact or coordinator will assign for handling. If non-routine, the division coordinator will inform the department public records/open government contact of such request and a determination for handling will be made.
- D. Training - The Learning and Development Office (LDO) will work with the agency public records/open government contact to establish a department-wide training program for all members who are authorized to release public records. The LDO

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will continually monitor changes to legislation and to Florida Department of State rules and regulations relating to public records, and recommend additional member training as needed.

- E. Establishment of Charges - The Public Records Law allows the department to collect the actual cost of material and supplies used to duplicate public records for requesters. The department may also collect a special service charge in addition to actual costs/fees, when a request for public records requires the extensive use of information technology resources and/or clerical or supervisory assistance. The following charges, fees and guidelines are designed to ensure that the department is consistent in its application of rules which allow the recovery of actual and extensive use costs.
1. Fees shall be as set forth in Attachment A on page 10 or as allowed by law.
 2. Public records must be open for inspection unless expressly provided by law.
 3. The department will not collect State of Florida sales tax on any sales of records to the public.
 4. All postage and/or other shipping charges incurred by the department will be recouped from the requester.
 5. A special service charge may be assessed when extensive use of department resources is required to fulfill a request. Extensive use of department resources is defined as more than thirty minutes of labor. Requests that involve an extensive use of time, as outlined below, will be charged starting with the time after the first thirty minutes if more than thirty minutes of labor is required. The fee shall be computed on one-half hour charges, with time being rounded to the closest quarter hour. Accurate accounts of time worked must be documented for invoicing purposes.
 - (a) Labor Time: When clerical and/or supervisory time is spent in the collection, inspection, redaction or production of a public records request, a service charge for labor should be applied by computing the actual cost of providing the labor. The cost shall be the actual salary for the member performing the work, including benefits.
 - (b) Technical costs: Data requests that require special processing will be analyzed by the division for impact on department business. If approved by the division director owning the records, they will be given to ISA to determine cost.
 - (c) All exempt records or information will be identified and redacted or marked confidential, citing the appropriate statutory exemption. Exempt records or information must not be distributed to the public or department members who do not meet the necessary requirements to obtain the information. The requestor shall be obligated to pay for the redaction time as stated above.
 - (d) When the records requested are in electronic form and the requester asks that they be sent via email, the records shall be sent by email. In such

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case, the per-page copying fee shall not be charged, but any statutory fee levied on that particular type of record shall be charged. In addition, the special service charge provided for in this section shall be assessed if applicable.

- (e) When the records requested are in electronic form and the requester asks that they be provided on CD or DVD, the records shall be provided on CD or DVD. In such case, the per-page copying fee shall not be charged, but the actual cost of the CD or DVD shall be charged along with any statutory fee levied on that particular type of record. In addition, the special service charge provided for in this section shall be assessed if applicable.

F. Fee Collection -

1. When all allowable fees/charges applied to a particular public records request can be calculated in advance, they should be collected prior to investing significant technology resources and/or clerical or supervisory resources.
2. Members responding to routine requests for public records will verbally advise the requester of any applicable charges. For non-routine requests or where actual costs and special service charges cannot be immediately determined due to the nature of the request, written estimates will be provided. In such cases, the provider shall give an estimated cost for producing the records and inform the requester that the actual cost may vary. After collecting the estimated fees and completing the request, if the actual fees are greater than the estimate, the balance must be collected before the records are provided. If the actual fees are less, a refund must be provided to the requester.
3. All checks should be made payable to the Department of Highway Safety and Motor Vehicles or DHSMV (or respective divisions).
(Sample language and invoice is included in Attachment D on page 19.)

- G. Fee/Charge Waivers - Fees or charges will be waived between the Department and other government agencies as allowed by law. Fees or charges may also be waived between the Department and other government agencies by agreement between management of DHSMV and the agency requesting the data. If the cost for providing paper or electronic copies of records is less than \$5, including postage and special service charges, the records will be provided at no charge, unless the fee is required by statute.

- H. Public Records Exemptions - The department is responsible for protecting information defined as confidential or as otherwise prohibited from public inspection or copying under the Public Records Law. All exemptions to the Public Records Law can be found in the Federal laws or Florida Statutes. A list of department records presently exempt from public inspection, examination, and copying is found in Attachment B on page 14. Any exemption in existence or hereafter enacted shall not be deemed waived or otherwise void or

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unenforceable simply because it is not included in this list. The public records/open government contact or the Office of the General Counsel should be consulted if questions exist.

The following standards and controls should be followed to prevent the inadvertent or unauthorized release of confidential and exempt information:

1. Confidential information shall be redacted (or extracted) from records prior to public release or inspection of nonexempt portions.
2. The Department is responsible for informing the requester when requests cannot be filled due to an exemption which prevents disclosure. Upon request, the provider must provide the basis for this exemption and its statutory citation and must be in writing if requested.
3. The Department will contact the Point of Contact of affected law enforcement agencies prior to releasing information related to the access of records through Driver and Vehicle Information Database (DAVID). If a law enforcement agency has accessed records through DAVID and indicates that the information related to the access of those records is exempt due to 1) an active investigation under Sec. 119.071(2)(c), F.S.; 2) involvement of undercover personnel under Sec. 119.071(4)(c), F.S.; 3) surveillance techniques or procedures or personnel under Sec. 119.071(2)(d), F.S.; or 4) any other applicable exemption allowed by law, the department will not release the information. If the access information is not exempt from release, the department will release the requested information.

I. General Public Records Provisions -

1. E-mail:

- (a) An agency as defined in Sec. 119.011, F.S. or legislative entity that operates a website and uses electronic mail, shall post the following statement in a conspicuous location on its website:
Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. (Sec. 668.6076, F.S.)

The Communications Office is responsible for ensuring the website includes this statement.

- (b) E-mail messages made or received by members in connection with official business are public records. They are subject to disclosure in the absence of an exemption. (AGO 96-34)
- (c) E-mail is subject to the statutory restrictions on destruction of public records. See Management [Policy 9.04](#), Records Management regarding e-mail retention and archiving.
- (d) Personal e-mail does not automatically become public record. The content of personal e-mail constitutes whether it is public record or not.

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However, Management [Policy 8.03](#), Personal Computer Use and Internet Access, governs the use of state computers for personal use.

- (e) E-mail conveying official business from a member's personal account is prohibited, except for an emergency situation. In the event of such use, the e-mail is public record of the department. If members use a personal account to convey official business, a copy of such e-mail must be sent to that member's department e-mail address for storage.
2. Providing information to individuals as a favor by department members is contrary to department policy. Department members who request information for personal use will pay the appropriate fee(s) as displayed in this policy.
 3. The Department records all text and PIN messages sent or received by all State-issued or managed Blackberries. These messages will be maintained and produced as a public record pursuant to the department's established records retention guidelines. Except in an emergency situation, such text and PIN messages should be used only for transitory messages such as meeting reminders or agency announcements that are not intended to formalize or perpetuate knowledge or set policy or procedures.
 4. Electronic communications of any kind that address official public business, even if communicated over a personal device, are subject to disclosure as a public record.

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(Attachment A)

Charges and Fees

1. Photocopies

1. Members' personnel files (Sec.112.218, F.S.)	
a. Copies	\$.50/page
b. Certified copies	\$ 1.00/page
2. Traffic crash reports (Sec.321.23(2)(a), F.S.)	\$ 10.00/copy
3. Homicide reports (Sec.321.23(2)(b), F.S.)	\$ 25.00/copy
4. Photocopies of any citations, forms, documents, booklets, letters, status reports, etc., made in reference to a specific individual(s) (Sec.322.20(11)(a), F.S.)	\$.50/page
5. Certified photographic copy of any item in A.4. above	\$1.00/page
6. Noncertified photographic copies of motor vehicle documents (Sec.320.05, F.S.)	\$ 1.00/page
7. Noncertified photographic copy of micrographic records (Sec.320.05, F.S.)	\$1.00/page
8. Certified copies of motor vehicle records (Sec.320.05, F.S.)	\$ 3.00/record
9. Noncertified computer-generated printouts of motor vehicle or vessel records (Sec.320.05, F.S.)	\$.50/record
10. Certified computer-generated printouts of motor vehicle or vessel records (Sec.320.05, F.S.)	\$3.00/record
11. Electronic access to motor vehicle, vessel, and mobile home registration data requested by tag, vehicle identification number, title number, or decal number. (Sec.320.05, F.S.)	\$.50/item
12. Electronic access to driver's license status report by name, sex, and date of birth or by driver license number. (Sec.320.05, F.S.)	\$.50/item
13. Duplication of any item not covered by above statutory charges (Sec.119.07, F.S.)	\$.15/page or \$.20/double-sided copy

2. Computer-generated Data

1. List of licensed drivers statewide/portion (Sec.322.20(8), F.S.)	\$.01/name
2. List of licensed drivers statewide/portion (Sec.322.20(8), F.S.), plus additional information not covered under Sec.322.20(8), F.S.	Processing charges will be assessed in addition to the \$.01/name charge. Special Service Charge

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3. Lists of motor vehicle records for the entire state, or any part or parts thereof, divided according to counties (Sec.320.05, F.S.)	Not less than \$.01 nor more than \$.05/item
4. Lists of licensed motor vehicle dealers (Sec.320.05, F.S.)	
a. Listings	\$ 25.00 each
b. Labels (1 7/16" x 4" pressure sensitive) or magnetic tape	\$ 25.00 each (Labels or magnetic media furnished by requester)
5. Lists of licensed mobile home dealers and manufacturers and recreational vehicle dealers and manufacturers (Sec.320.05, F.S.)	
a. Listings	\$ 15.00 each
b. Labels or magnetic media (as 4.b. above)	\$ 15.00 each
6. Special programming (Sec.119.07(1)(b), F.S.)	Special Service Charge

3. Driver History Transcript (Sec.322.20(11)(a), F.S.)

Fee requirements for driver information do not apply when there is a need for correction of a driver history record. When information is provided to an individual, his employer, his attorney, or an insurance agent, regarding incorrect information concerning a suspension, revocation, cancellation, conviction, or other data appearing on a record, no fee is required.

1. Terminal search of 3-year driver record (if no record is found)	\$ 8.00 each
2. Transcript of 3-year record (including search fee)	\$ 8.00 each
3. Terminal search of 7-year or complete driver record (if no record is found)	\$ 10.00 each
4. Transcript of 7-year or complete record (including search fee)	\$ 10.00 each
5. Certified copy of a transcript of driver history record	\$ 3.10 each
6. Exemplified record	\$ 15.00 each
7. Assisting persons in searching any one individual's driver record at a terminal located at the Tallahassee headquarters	\$2.00

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4. Crash Photographs (s.321.23)(2)(c))

Type	Black and White	Color
5" x 7" enlargement	\$.75 each	\$ 1.00 each
8" x 10" enlargement	\$ 1.00 each	\$ 1.50 each
11" x 14" enlargement	\$ 1.75 each	Not available
16" x 20" enlargement	\$ 2.75 each	Not available
20" x 24" enlargement	\$ 3.75 each	Not available

5. Manuals

(electronic copy format to department's Internet is at no cost to the requestor)

1. DMV Procedures Manual (Sec.320.05, F.S.)	\$ 25.00 each
2. All other manuals	Actual Cost

If an actual manual is provided, the actual cost of publication as paid by the state will be charged. If a manual is photocopied, the actual cost will be calculated at \$.15 per page or \$.20 per double-sided copy plus the cost of a binder if provided plus applicable personnel charges. (Sec.119.07(1)(a), F.S.)

6. Audiovisual Materials

1. Audio tape copy	Actual Cost plus Special Service Charge
2. Videotape record copy (Sec.320.05, F.S.)	\$ 15.00 each

7. Microfilm and Microfiche: Actual Cost (Sec.119.07(1)(a), F.S.)

8. Remote Electronic Access: (Sec.119.07(1), F.S.; Sec.119.085, F.S.; Sec.320.05, F.S.)

Information from the department's motor vehicle and/or driver license databases is available through online service providers. For more information, contact the Bureau of Records or the Information Research Services Office, Division of Motorist Services, Neil Kirkman Building or www.flhsmv.gov/data/internet2.html.

- a. Requesters must subscribe to one of the designated online service providers.
- b. Requesters must submit an application and deposit to the department. The deposit is based on the estimated number of inquiries to the motor vehicle and/or driver databases for a period of two and a half months, times \$.50. The minimum deposit is \$5.00 for each database.
- c. The deposit is held in escrow until the service is canceled. At that time the deposit will be fully refunded without interest or used to cover the outstanding charges.
- d. Access charges are:

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1. Motor vehicle and mobile home registration data requested by tag, VIN, title number, or decal number	\$.50/requested item
2. Driver license status report by name, sex, and date of birth or by driver license number	\$.50/requested item
3. Driver license number(s) by minimum of last name and first initial. (Produces a name, address and driver license number listing of all individuals meeting the entered criteria. Requires a second inquiry as per 2. above to obtain a status report)	\$ 1.00/inquiry

- e. The online service provider will collect the fees for the online service and database access charges and deposit the department's fees into a designated account.

9. Driver History Transcript Electronic Access: A transcript is available through a network provider or in some cases by secure data exchange. For more information, contact the Chief, Bureau of Records, Neil Kirkman Building.

- a. In order to qualify for direct connection to a port, a network provider must agree to submit a minimum of 5,000 transactions per month, after the first six months.
- b. Network providers and secure data exchange requesters must obtain written approval from the department.
- c. Network providers and secure data exchange requesters must pay all costs associated with access to the system. Such costs include, but are not limited to, leased telephone line connection, modem/DSU, and system port. No dial-up access to the system will be authorized.
- d. Network providers and secure data exchange requesters will pay the department, through daily electronic fund transfer, for all transactions processed through their leased lines.
- e. Driver history transcript costs will be calculated as described in item 3 above. Network providers will also pay a prorated system cost recovery fee.
- f. End users are the customers and responsibility of the authorized network provider. The department will not interact directly with any end users. Network providers will maintain a help desk for their end users.

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(Attachment B)

**DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
PUBLIC RECORDS EXEMPTION SUMMARY**

Section 119.011(11), F.S., defines “public records” to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by the agency.

An agency claiming an exemption from disclosure bears the burden of proving the right to an exemption. The custodian of the record must state the basis for any exemption and provide the statutory basis for the exemption. If a record contains some information that is exempt, the law requires the custodian to delete or excise only that portion for which the exemption applies and to provide the remainder of the record.

What are the statutory exemptions relating to law enforcement and security records?

1. Active criminal investigative and intelligence information exemption, Sec.119.071(2)(c)1, F.S.
2. Autopsy photographs and recordings, Sec.406.135(2), F.S.
3. “Baker Act” reports, Sec.394.463(2)(a)2, F.S..
4. Confessions by a person arrested until case completed, Sec.119.071(2)(e), F.S.
5. Confidential informants, Sec.119.071(2)(f), F.S.
6. Criminal history information obtained from other states or federal criminal justice agencies and records sealed or expunged by court order, Sec. 943.053(2), F.S., Sec.943.059, F.S., Sec.943.0585, F.S.
7. Emergency “911” voice recordings, as to those portions identifying name, address, telephone number or personal information identifying the caller, Sec.365.171(12), F.S.
8. Fingerprint records - Biometric identification information is exempt from Sec.119.07(1), F.S. The term “biometric identification information” means any record of friction ridge detail, fingerprints, palm prints and footprints, Sec.119.071(5), F.S.
9. Firearms records, agency not to maintain list or registry of owners except for records of firearms used in criminal act or relating to persons convicted of crime, Sec.790.335(2), F.S. and identity of concealed firearms permit holder protected, Sec.790.0601(1), F.S.
10. Juvenile offender records, Sec.985.04(1), F.S.; but child traffic violators may be disclosed, Sec.985.11(3), F.S. and a child’s name, photo, address and arrest report may be disclosed if arrested for a felony or who is transferred to the adult system, Sec.985.04(2), F.S.

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11. Law enforcement personnel records, as to complaints against an officer, Sec.112.533(2), F.S.; as to home address, telephone number, etc., Sec.119.071(4)(d)1, F.S.
12. Motor vehicle records
 - a. Crash reports, first 60 days, Sec.316.066(5)(a), F.S.
 - b. Department of Highway Safety and Motor Vehicles records, see Management [Policy 9.02](#).
13. Pawnbroker records, Sec.539.003, F.S.
14. Prison and inmate records, as to Department of Corrections records per Sec.945.10, F.S., otherwise subject to disclosure.
15. Resource inventories and emergency response plans, Sec.119.071(2)(d), F.S.
16. Security system information and blueprints, Sec.281.301, F.S., Sec.119.071(3)(a) and (3)(b)1, F.S.
17. Surveillance techniques, procedures or personnel, Sec.119.071(2)(d), F.S.
18. Victim information; see Sec.119.071(2)(h), F.S., Sec.119.011(3)(c)2, F.S., Sec.119.071(2)(j)1 and (2)(h)1, F.S. as applicable.

Exemptions specific to DHSMV

Section 112.533(2)(a), F.S. – Complaints against law enforcement officers. Confidential until the investigation ceases to be active, or until the agency head or agency head’s designee provides written notice to the officer who is the subject of the complaint, that the agency has either concluded the investigation with a finding not to proceed with disciplinary charges or to file charges; or concluded the investigation with a finding to proceed with disciplinary action or to file charges.

Section 316.066(5)(a), F.S. – Except as otherwise provided in the exemption, crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes are confidential and exempt from public disclosure requirements for a period of 60 days after the date the report is filed.

Section 320.025(3), F.S. – All records relating to the registration application of a law enforcement agency, Attorney General’s Medicaid Fraud Control Unit, or public defender’s office for motor vehicle or vessel registration and license plates or decals issued under fictitious names, are exempt from Sec.119.07(1), F.S. as long as the information is retained by the Department of Highway Safety and Motor Vehicles.

Section 320.05(2), F.S. – Information on motor vehicle or vessel registration records of the Department of Highway Safety and Motor Vehicles shall not be made available to a person unless the person requesting the information furnishes positive proof of identification.

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Section 322.125(3) and (4), F.S. – When a member of the Medical Advisory Board acts directly as a consultant to the Department of Highway Safety and Motor Vehicles, a board member’s individual review of the physical and mental qualifications of a licensed driver or applicant is exempt from Sec.286.011, F.S. Reports received or made by the board or its members for the purpose of assisting the department in determining whether a person is qualified to be licensed are for confidential use of the board or department and may not be divulged to any person except to the driver or applicant or used as evidence in any trial except proceedings under Sec.322.271, F.S. or Sec.322.31, F.S.

Section 322.126(3), F.S. – Disability reports are confidential and exempt from Sec.119.07(1), F.S. and may be used solely for the purpose of determining the qualifications of any person to operate a motor vehicle.

Section 322.142(4), F.S. – Reproductions of color photographic or digital imaged licenses shall be made and issued only for the purposes set forth in the subsection and are exempt from Sec.119.07(1), F.S.

Section 322.20(3), F.S. – The release by the Department of Highway Safety and Motor Vehicles of the driver history record, with respect to crashes involving a licensee, shall not include any notation or record of the occurrence of a motor vehicle crash unless the licensee received a traffic citation as a direct result of the crash, and to this extent such notation or record is exempt from Sec.119.07(1), F.S.

Section 322.20(9), F.S. – The Department of Highway Safety and Motor Vehicles shall furnish without charge specified driver license information from the Division of Motorist Services to the courts for the purpose of jury selection or to any state agency, state attorney, sheriff or chief of police. Such court, state agency, state attorney, or law enforcement agency may not sell, give away, or allow the copying of such information. Noncompliance with this prohibition shall authorize the department to charge the non-complying court, state agency, state attorney, or law enforcement agency the appropriate fee for any subsequent lists requested.

Section 328.40(3), F.S. – All records kept or made by the Department of Highway Safety and Motor Vehicles under the vessel registration law are public records except for confidential reports.

Section 627.736(9)(a), F.S. – Reports from insurers regarding cancellations and policy renewals and reports of the issuance of new policies that have been received by the Department of Highway Safety and Motor Vehicles pursuant to this section are confidential and exempt from Sec.119.07(1), F.S. The records are to be used for enforcement and regulatory purposes only, except as provided in the subsection.

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Section 119.071(2)(c), F.S. – Active criminal intelligence information and active criminal investigative information, including information related to law enforcement’s access to or use of the Driver and Vehicle Information Database (DAVID).

Section 119.071(2)(d), F.S. – Any information revealing surveillance techniques or procedures or personnel, including information related to law enforcement’s access to or use of the Driver and Vehicle Information Database (DAVID).

Section 119.071(4)(c), F.S. – Any information revealing undercover personnel of any criminal justice agency, including information related to access or use of the Driver and Vehicle Information Database (DAVID).

Section 119.0712(2), F.S. - Personal information in a motor vehicle record is confidential and exempt from Sec.119.07(1), F.S. Personal information includes, but is not limited to, an individual’s social security number, driver identification number or identification card number, name, address, telephone number, medical or disability information, and emergency contact information. "Motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Highway Safety and Motor Vehicles.

Section 119.0712(2), F.S. - Personal information made confidential and exempt may be disclosed by the Department of Highway Safety and Motor Vehicles to an individual, firm, corporation, or similar business entity whose primary business interest is to resell or re-disclose the personal information to persons who are authorized to receive such information. Prior to the department's disclosure of personal information, such individual, firm, corporation, or similar business entity must first enter into a contract with the department regarding the care, custody, and control of the personal information to ensure compliance with the federal Driver's Privacy Protection Act of 1994 and applicable state laws.

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(Attachment C)

Standard Language for Acknowledgement

SAMPLE

This will acknowledge receipt of your request of *(insert date)* for public records from the Department of Highway Safety and Motor Vehicles.

We will promptly locate the records sought and notify you when they are available, along with any applicable copying fees and estimated labor costs, if any, authorized by law. In lieu of copies, we can arrange for you to inspect the records, subject to proper supervision.

If you have any questions, you may contact me at *(insert phone number)* or by e-mail at *(insert e-mail address)*.

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(Attachment D)

Invoice Cover Letter

SAMPLE

Enclosed please find an invoice for your public records request. Upon payment of the amount shown, we will forward copies of the records requested. Please make your check or money order payable to the Department of Highway Safety and Motor Vehicles and send it to *(insert address)*.

If you have any questions, you may contact me at *(insert phone number)* or by e-mail at *(insert e-mail address)*.

INVOICE

DATE: *(Insert date)*

To: *(Requestor's Name & Address)*

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
		SHIPPING & HANDLING	
		TOTAL DUE	

Make checks or money orders payable to: Department of Highway Safety and Motor Vehicles
If you have any questions concerning this invoice, call or e-mail: *(insert name, phone number, e-mail)*