

Agreement No:

### THIRD-PARTY DRIVER IMPROVEMENT SCHOOL AGREEMENT

This Third-Party Driver Improvement School Agreement is between the Commonwealth of Pennsylvania ("Commonwealth"), acting through the Department of Transportation ("PennDOT") and , a ("School").

On November 3, 2022, Act 120 was enacted to amend 75 Pa.C.S. § 1549 to authorize PennDOT to establish Third-Party Driver Improvement Schools. Act 120 of 2022 states that a third party may operate a driver improvement school only if it has entered into an agreement with PennDOT and the agreement is in effect. The Vehicle Code defines a driver improvement school as a program for educating drivers through a PennDOT-developed or approved curriculum that may be presented either by PennDOT or by a third-party approved by PennDOT under section 1549 (relating to establishment of schools). Under 75 Pa.C.S. § 1549(a.1), a third-party may include, but not be limited to (1) a nationally recognized nonprofit or not-for-profit organization which provides driver education services to improve traffic safety, or (2) a private driving school in this Commonwealth.

Title 75 of the Pennsylvania Consolidated Statutes ("Vehicle Code") allows third-parties to provide point reduction through a PennDOT-approved driver improvement program ("Program"). The School applied to PennDOT to administer the Program. PennDOT has selected the School to administer the Program because PennDOT has determined that the School is qualified to provide the necessary instruction and testing services.

The parties, intending to be legally bound, agree as follows:

1. **Application.** The application, including an organizational chart and job descriptions, that the School submitted to PennDOT to be considered to administer the Program is attached as Exhibit A.
2. **Program Requirements.** The School shall comply with the Program Requirements attached as Exhibit B. The School's authority to provide services under this Program is conditioned upon its strict compliance with the Program Requirements.
3. **Facility Maintenance.** If the School offers in-person instruction, the School shall maintain a facility which is acceptable in appearance to PennDOT and is in compliance with all applicable federal, state, and local laws.
4. **Record Keeping.** The School shall securely maintain at each approved

location, for a minimum of two years, a record of each student for whom the School provided a course, whether the student completes or does not complete the course. Each record must include the following information related to the student:

- (1) complete and current name and residential address;
- (2) driver's license number;
- (3) date or dates the student took the driver improvement course;
- (4) the date the student completed the course;
- (5) student's test results of the course;
- (6) the name and instructor number of the Certified Instructor conducting the course; and
- (7) copy of the student's license.

5. **Criminal Record Check Requirements.** Each year, the School shall provide to PennDOT a list of all personnel to be engaged in administering the terms of this agreement and in providing training under it. Prior to the execution of this agreement, the School shall obtain a criminal record check from the Pennsylvania State Police for each of the School's owners, officers, administrators, Certified Instructors, and employees involved in administering the terms of this agreement and made the record checks available to PennDOT. The criminal record checks must be updated annually, and a report showing the results of the criminal record checks must be submitted to PennDOT by January 31<sup>st</sup> of each year. Subsequent criminal record checks may be required upon request by PennDOT. PennDOT shall review the criminal record checks and may refuse the School's administration of this agreement if it is determined that administering the terms of this agreement is not in the best interest of the Commonwealth or the Program. The School shall provide 20 days written notification to PennDOT of all personnel changes, as they occur, and criminal record checks for new personnel.

6. **Federal Bureau of Investigation ("FBI") Clearance-Data Entry Employees Only.** Upon hire, any employee who will have access to make a change to a student's driver's record must have a fingerprint-based FBI criminal history check to determine if the employee has been convicted of a criminal offense. A fee is associated with the service, which the School shall pay.

7. **Child Abuse Clearance.** The School shall obtain child abuse clearance for individuals who will be working directly with persons under the age of 18. *See* 23 Pa. C.S. § 6344(a)(5) & (b). Before employment begins, an employee must submit to the School or other person responsible for employment decisions, a criminal history report (18 Pa. C.S. Chapter 91), a certification from the Pennsylvania Department of Human Services as to whether the applicant is named as a perpetrator in the Statewide database, and a Federal criminal history record information through submission of fingerprints to the FBI or PSP or another authorized agent.

8. **Notice to Proceed.** The School represents and warrants that it has secured the performance bond, as described below. PennDOT shall not issue a "Notice to Proceed" until the bond is effective. PennDOT may accept additional or alternative forms of security, as deemed appropriate by PennDOT.

9. **Certificates Non-transferable.** Third-Party Driver Improvement School certificates are non-transferable. If there is a change of ownership, the new owner must apply for certification. The School shall surrender old certificates to PennDOT before a new certificate can be issued. The application for a new certificate must be made in the same manner as the original certificate. All certificates must be held at the Third-Party Driver Improvement School primary business location and will be made available upon request.

10. **Bond Specifications.** The performance bond must specify that the Program undertaken pursuant to this agreement must be administered in a manner satisfactory to PennDOT and the surety is responsible for costs and expenses up to the bond amount resulting from unsatisfactory performance including those relating to the instructing of drivers, as deemed necessary by PennDOT.

11. **Bond Amount.** The bond must be in the amount of \$150,000. If the amount is decreased, or if a final judgment is outstanding, the School's certificate or agreement may be suspended or terminated until it restores the original bond amount.

12. **Surety.** The bond must be executed by a surety company authorized by law to transact business in this Commonwealth.

13. **Bond Terms.** The term of the bond must commence on or before the date the School commences operation and must remain in effect through the first year of this agreement.

14. **Succeeding Years.** For each succeeding year of this agreement, the School shall notify PennDOT by mail, no later than 60 days before the end of the preceding year, of the intention of the surety to provide a bond for the next year and submit, no later than 30 days before the end of the preceding year, a fully executed bond for the succeeding agreement year. If the surety bond provides for automatic renewal, it will be deemed to comply with this requirement.

15. **Benefit of PennDOT.** The bond must be for the use and benefit of PennDOT, including securing against losses incurred in negotiating checks or other instruments drawn by the School.

16. **Failure to Comply with Bond Requirements.** The School's failure to comply with these requirements will be a material breach of this agreement and may be cause for default or termination. If the bond is not renewed, terminated, or becomes unenforceable, this agreement may be suspended or terminated until the School furnishes a substitute bond.

17. **Self-insured Status.** If the School is self-insured, it shall file an appropriate certificate with PennDOT.

18. **Visits to Sites.** PennDOT, or its designee, and the United States Department of Transportation ("USDOT") may make visits to any School site during regular business hours with or without prior notice to the School.

19. **Audit Requirement.** PennDOT, or an authorized designee selected by PennDOT, and USDOT may make periodic audits relating to this agreement. The degree and conduct of any such audit, and the frequency of such audits, will be at the sole discretion of PennDOT and USDOT and will focus on the School's compliance with the terms of this agreement. The School shall cooperate fully with PennDOT's auditor and USDOT's auditors.

20. **No Payment to School.** PennDOT shall not make any payment to the School. The School shall bill the public users of its services.

21. **Limited Access.** The School's access to all PennDOT systems is limited to only that information necessary for the purposes outlined or activities authorized under this agreement.

22. **Use of Information.** The School or any of its agents, may not sell, assign, or otherwise transfer any information or portions of information obtained pursuant to this agreement to any other party. The School may not use any record information so obtained pursuant to this agreement for any purpose other than those as specifically authorized by this agreement. The School shall comply with section 6114 of the Vehicle Code, 75 Pa. C.S. § 6114 (relating to limitation on sale, publication and disclosure of records); Title 67, Pennsylvania Code, Chapter 95 (relating to sale, publication or disclosure of driver, vehicle and accident records and information); the Federal Driver's Privacy Protection Act, 18 U.S.C. §§2721 *et seq.*; the Breach of Personal Information Notification Act, 73 P.S. §§ 2301 - 2329; and the Federal Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.* Consistent with the provisions of this agreement and the Program Requirements, the School shall be the sole user of record information supplied by PennDOT. Record information supplied by PennDOT may not be used to create or update a file to be used by the School, or to develop their own source or record information. Record information shall not be retained, stored, combined, or linked in with any other data on any database by the School, for any reason.

23. **No Direct Mailing or Advertisements.** Under no circumstances may the School use, disclose, publish, or permit others to use any information provided by PennDOT for direct mail advertising or any other type or types of mail or mailings or electronic dissemination, except as specifically contemplated by this agreement and as required to process Transactions. The School shall not disclose or publish any information appearing in any record.

24. **Publication Prohibited.** The School shall not disseminate or publish the record information obtained from PennDOT or allow any other person to disseminate or publish any driver record information without the prior written approval of PennDOT.

25. **Ownership of Records.** PennDOT retains exclusive ownership of record information provided to the School, and created by the School on behalf of PennDOT, under this agreement. PennDOT may retain the School's application materials.

26. **Required Security.** The School shall maintain the highest degree of security

over information furnished by PennDOT and take all necessary steps to prevent the disclosure or use of such information in any form or manner not expressly permitted by this agreement. Security arrangements are subject to PennDOT's inspection or audit.

27. **Surrender of Productions and Destruction of Record Information.** Upon termination of this agreement or at any time requested by PennDOT, the School shall immediately surrender all PennDOT products and certify in writing the destruction of all PennDOT information in the School's possession. This provision survives termination of this agreement and will continue until such time as the School has fully complied.

28. **Compliance with Laws and Regulations.** The School shall comply with all applicable federal and state laws and regulations and local ordinances in carrying out its obligations under this agreement. Additionally, the School shall maintain its facilities to meet the requirements set forth by the Pennsylvania Department of Labor and Industry, including but not limited, to those standards set forth in 34 Pa. Code, Chapter 47, Subchapter D, Facilities for Handicapped.

29. **Environmental Laws.** In carrying out this agreement, the School shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

30. **Conflict Between Agreement and Attachments.** In the event of conflict between the provisions of this agreement and any attachment to this agreement, the provisions of this agreement will control.

31. **Termination for Convenience.** Either party may terminate this agreement for convenience by providing 30 calendar days' notice of the termination in writing to the other party. PennDOT may also, for convenience, cancel or decertify a School or Certified Instructor.

32. **Termination for Cause.** PennDOT may terminate this agreement for cause. PennDOT may also, for cause, cancel or decertify a School or Certified Instructor. The following may constitute cause under this section:

- (1) failure to comply with or satisfy any of the provisions of this agreement or any amendments;
- (2) falsification of any records or information relating to the Program;
- (3) commission of any act that compromises or in any way impacts the integrity of the Program;
- (4) if the Certified Instructor's operating privilege is suspended, revoked, recalled, or disqualified; or
- (5) unsatisfactory audit findings or failure to correct any discrepancies noted on an audit report.

33. **Opportunity to Correct.** If PennDOT determines grounds for termination or

decertification exist for failure to comply with or satisfy any of the requirements of this agreement, PennDOT at its sole discretion, may allow a School or Certified Instructor 30 days to correct a deficiency. If the deficiency is not corrected, a School or Certified Instructor may be decertified or terminated.

34. **Charges after Issuance of Certification.** If after the issuance of certification, a School is charged with any offense that a conviction for which would result in the charged School's ineligibility for certification, the certificate must be suspended pending disposition of the charge. If the School is convicted of the charge, the certificate must be revoked.

35. **Relinquishment.** The School or any Certified Instructor may relinquish a certificate to PennDOT upon 30 days' notice to PennDOT. Forms, manuals, or supplies PennDOT has furnished, including certification and certification cards, must be surrendered.

36. **Suspension of School Operations.** PennDOT may suspend the School's operations under this agreement on an interim basis prior to the termination date or a hearing, where it determines that the School's conduct presents an immediate and substantial threat of harm to the public or PennDOT's interests. Any such interim suspension shall be subject to review as provided in 67 Pa. Code Chapter 491 (relating to administrative practice and procedure).

37. **Required Commonwealth Provisions.** The School shall comply with the Commonwealth Standard Provisions, attached as Exhibit C. As used in Exhibit C, the term "Contractor" refers to the School.

38. **Effective date and Term.** This agreement will become effective when it is fully executed by the parties and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature. This agreement will remain in effect until terminated in accordance with either section 31 or 32 of this agreement.

39. **Amendments or modifications.** No alternations or variations to this agreement will be valid unless made in writing and signed by the parties. Except as otherwise provided under section 45, amendments to this agreement must be accomplished through a formal written document signed by the parties with the same formality as this agreement.

40. **Severability.** The provisions of this agreement are severable. If any phrase, clause, sentence or provision of this agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth and its applicability to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and its applicability to any government, agency, person or circumstance will not be affected.

41. **No Waiver.** Either party may elect not to enforce its rights and remedies under this agreement in the event of a breach by the other party of any term or condition of this agreement. In any event, the failure by either party to enforce its rights and remedies under

this agreement may not be construed as a waiver of any subsequent breach of the same or any other term or condition of this agreement.

42. **Independence of the Parties.** Nothing contained in this agreement is intended or may be construed to, in any respect, create or establish the relationship of partners between the School and PennDOT, or as constituting PennDOT as the representative or general agent of the School.

43. **Assignment.** This agreement may not be assigned, either in whole or in part, without PennDOT's written consent.

44. **No Third-Party Beneficiary Rights.** This agreement does not create or confer any rights in or on persons or entities not a party to this agreement.

45. **Notice.** All notices and reports required under the provisions of this agreement must be in writing and given to the parties at the address provided under this agreement, by regular mail, e-mail, or delivery in person:

If to PennDOT:  
Pennsylvania Department of Transportation  
Vehicle Inspection Division  
ATTN: Schools and Instructors Unit Manager  
P O Box 69003  
Harrisburg, PA 17106-9003  
[RA-PDSCHOOLINSTRUCT@pa.gov](mailto:RA-PDSCHOOLINSTRUCT@pa.gov)

If to the School:  
Name & Title  
Address  
Telephone  
Email

Either party may update this contact information without the need for formal amendment by providing the other party notice.

46. **Force Majeure.** Neither party will be liable for failure to perform under this agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision will become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision will not be effective unless the failure to perform is

beyond the control and without the fault or negligence of the nonperforming party.

**47. Integration and Merger.** The parties intend this statement of their agreement to constitute the complete, exclusive, and fully integrated statement of their agreement. It is the sole expression of their agreement, and they are not bound by any other agreements of whatsoever kind or nature. The parties also intend that this agreement may not be supplemented, explained, or interpreted by any evidence of trade usage or course of dealing. In entering this agreement, the parties did not rely upon oral or written statements or representations not contained within the document itself.

**48. Counterparts.** This agreement may be executed in counterparts, each of which is deemed an original and has the full force and effect as an original but all of which constitute one and the same instrument.

**49. Electronic Signatures.** The parties may sign this agreement electronically in accordance with the Electronic Transactions Act, 73 P.S. § 2260.301, *et seq.*"



The parties, through their authorized representatives, have signed this agreement below.

School

BY \_\_\_\_\_  
Title: \_\_\_\_\_ Date \_\_\_\_\_

\*School must complete the attached resolution or provide its own resolution authorizing signature authority.

---

**DO NOT WRITE BELOW THIS LINE - FOR DEPARTMENT USE ONLY**

APPROVED AS TO FORM  
AND LEGALITY

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

BY \_\_\_\_\_  
Office of Chief Counsel Date \_\_\_\_\_

BY \_\_\_\_\_  
Deputy Secretary or designee Date \_\_\_\_\_

BY \_\_\_\_\_  
Office of General Counsel Date \_\_\_\_\_

BY \_\_\_\_\_  
Office of Attorney General Date \_\_\_\_\_

18 AT-122.0

## RESOLUTION

BE IT RESOLVED, by authority of the [name of governing body] of the [Name of the School], [County] County, and it is hereby resolved by authority of the same, that the [Title of Authorized Signatory] of said School be authorized and directed to sign the agreement on its behalf.

ATTEST:

\_\_\_\_\_  
[official title]

[Name of School]

By: \_\_\_\_\_  
[official title]

I, [Name], [Official Title] of the [Name of School], do hereby certify that the foregoing is a true and correct copy of the Resolution adopted at a regular meeting of the [name of governing body], held the day of , 20 .

Date: \_\_\_\_\_

\_\_\_\_\_ [official title]  
(Signature)

NOTE: Signature on the agreement must conform with the signature on this Resolution.