



*The Customer and OK.gov wish to contract for the provision of services from OK.gov to Customer as per the Terms and Conditions below. OK.gov provides online access, from Customer's terminals, to a number of applications that provide electronic government services. Customer wishes to use the services made available by OK.gov. OK.gov is a service of the State of Oklahoma, through its public-private partnership between the Oklahoma Office of State Finance and Oklahoma Interactive, LLC.*

#### **Terms and Conditions:**

1. This agreement sets forth the terms and conditions under which OK.gov will provide certain services to Customer.
2. OK.gov reserves the right to withdraw any service or services, without consulting Customer prior to withdrawing such service, and shall have no liability whatsoever to Customer in connection with deletion of any such service.
3. Customer acknowledges that it has read this Agreement and agrees that it is the complete and exclusive Agreement between the parties, superseding all other communications, oral or written. This Agreement may be modified only by written amendment signed by the parties, except as otherwise provided for in this paragraph. OK.gov shall be entitled to announce, online or in writing, changes to the network, to the services provided, to prices, or other changes, which changes shall constitute modifications to this agreement once announced. In the event Customer issues a purchase order or other instrument covering the services herein specified, it is understood and agreed that the Purchase Order is for Customer's internal purposes only and shall in no way modify, add to, or delete any of the terms and conditions in this Agreement.
4. A yearly account administration fee will apply to each of Customer's monthly accounts with OK.gov. The amount of the yearly account administration fee shall be set by those officials overseeing OK.gov and authorized to do so.
5. Customer's consent to this Agreement is evidenced by any one of the following: (a) signature by Customer or Customer's authorized representative to this Agreement, (b) payment of Customer's initial account administration fee and (c) the assignment to Customer of username(s) and password(s) which are then used on OK.gov.
6. Conditions of Use
  - a) Hours of Service: Service will be provided on a non-guaranteed basis seven days per week (Sunday through Saturday), twenty-four (24) hours per day, excluding scheduled maintenance as designated from time to time by OK.gov in its sole discretion.
  - b) ID/Account Numbers: OK.gov will issue to the Customer a requested number of ID/account numbers. Customer is responsible for preserving the secrecy of its account numbers and for ensuring that access to services and use of its ID/account numbers are controlled by it and that, in those instances where a purchase order provides time and/or dollar and/or database limitations, use of the system does not exceed those limitations; OK.gov shall not be responsible for these responsibilities of Customer. Customer is liable for any and all charges for services to its ID/account numbers, whether or not authorized by Customer.
  - c) Copyright and Ownership of Information: Customer agrees to comply with any copyright notices or other limitation on use which are applicable to services, databases, or other information provided through applicable to services, databases, or other information provided through OK.gov.
  - d) Termination of Monthly Account: This Agreement permits Customer to become a monthly account holder with OK.gov UPON CEASING TO BE A MONTHLY ACCOUNT HOLDER TO OK.gov, for any reason, Customer AGREES to destroy or return to OK.gov, all originals and all copies of the network access software (the disk or disks furnished to Customer upon subscription to OK.gov, if any), together with any amendments or modifications that may have been sent to Customer or downloaded by Customer during Customer's subscription; AND TO ERASE from Customer's hard disk and any long-term storage medium residing on any computer or server or network onto which Customer may have copied them, the programs and any amendments from any such disk or disks. Customer agrees to promptly certify the destruction or return of such programs or disks, in writing, if requested by OK.gov. Customer acknowledges that OK.gov may not have an adequate remedy at law for any breach of this clause which Customer may commit, and therefore, in addition to any other remedies which it may invoke, OK.gov may seek and obtain an injunction in court to enforce the provisions of this clause.
  - e) Acceptance of this agreement allows Customer a non-transferable END-USER License in any provided software. The software is licensed, not sold, and is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Customer may copy software onto Customer's computer or computers at one location only. Software furnished is for

Customer's use only. Customer may not sell, rent or lease the software or separate component parts to anyone else. Customer may also store or install a copy of the software on a storage device, such as a network server, for Customer's use only, during the time that Customer is a monthly account holder.

## 7. Payment

- a) Invoices for all services rendered will be prepared by OK.gov and provided by OK.gov either online or by mail to Customer's email address or mailing address in OK.gov's records. Rates shall be in accordance with the OK.gov rate schedule in effect at the time that the services are rendered. Terms of invoice payment shall be net twenty (20) days.
- b) In addition to the rates contained herein, Customer shall pay OK.gov for all sales, use, and excise taxes incurred by OK.gov in providing services to Customer.
- c) Past due invoices will be subject to a delinquency charge of 1.5% per month of the amount in arrears, or the legal limit, whichever is less. Customer agrees to pay all costs of collection of delinquent accounts, including reasonable attorney's fees, as permitted by law.

## 8. Limitation of Liability

- a) The remedies set forth in this Agreement are exclusive and in no event shall OK.gov, or the Oklahoma Department of Public Safety ["DPS"] or any of their directors, officers, agents, or employees, be liable for special, indirect, incidental, or consequential damages, including, but not limited to, lost income or lost revenues, whether such damages arise out of breach of contract, negligence, strict liability, or any other theory of liability. Such damages against OK.gov shall in any event be limited to the charges paid for the previous month by Customer for the services in connection with which a claim of liability is asserted or imposed. Customer specifically understands and recognizes that the system by which these services are offered to it is experimental and may experience problems of various kinds resulting in an inability to provide services. DPS shall not be liable for any damages whatsoever.
- b) Customer agrees that neither OK.gov nor DPS will be liable for any claim or demand of any nature or kind, whether asserted against OK.gov, DPS or against Customer, by any third party, arising out of the services or materials provided or use of the same; Customer agrees to indemnify and hold OK.gov, DPS, and their agents, officers, directors and employees, harmless from claims of third parties arising out of the Customer's use of the services or materials provided pursuant to this Agreement.
- c) Neither OK.gov nor DPS shall be liable for or deemed to be in default for any delays or failure in performance or interruption of service resulting directly or indirectly from any cause or circumstance beyond its reasonable control, including problems with or delays caused by its Internet or database providers or other providers.
- d) No action or suit, regardless of form, other than an action for payments due OK.gov, arising out of the transactions pursuant to this Agreement may be brought by either party more than one year after the cause of the action accrues.
- e) OK.gov, the Oklahoma Information Division of NICUSA, Inc., the State of Oklahoma, county and local government agencies and universities, professional associations and all other parties who may from time to time provide information for access on OK.gov shall at no time be liable for any errors in, or omissions from, information available on OK.gov.

## 9. Warranty

- a) OK.gov makes no warranties, express or implied, including but not limited to implied warranties of merchantability or fitness for any particular purpose. While OK.gov and its suppliers strive for accuracy and completeness of data and services furnished pursuant to this Agreement, no warranty or representation is made or implied as to such.
- b) Customer warrants that it is aware of, and will comply with, all applicable federal, state, or other laws with regard to access to, or use of, any and all information, databases, programs, or other products to which access is provided by or through OK.gov.

## 10. Rate Changes

- a) Rates are as set forth in the OK.gov Service Agreement, as amended from time to time, and are established by the state governing authority of OK.gov in its sole discretion (unless this Agreement is a fixed term agreement as detailed in Paragraph 10b below). Such rates may change as the governing authority decides.
- b) The parties may enter into a fixed-term agreement setting forth a set rate for a specified term. Any such agreement will be evidenced and detailed in writing.

## 11. Limitations

Under no circumstances may Customer, or any other party acting by or through Customer or using Customer's ID/account numbers,

use data received from or through OK.gov in any way except in full and complete compliance with all applicable laws.

## 12. Tradename / Trademark

Customer agrees that it will not use the trademark OK.gov, or the names or means of identifying any of OK.gov's services in any fashion unless specifically authorized to do so in writing by OK.gov. Customer agrees not to tamper with, alter, or change in any fashion, any databases or programs made available to Customer by OK.gov, by Customer or anyone under the control or direction of Customer.

## 13. General Conditions

a) **Waiver:** The waiver, modification, or failure to insist on any of these terms or conditions one or more times by OK.gov shall not void, waive, or modify any of the other terms or conditions in this Agreement, nor be construed as a waiver or relinquishment of OK.gov's right to performance of any such term or terms in the future.

b) **Severability:** If any provision or part of the Agreement shall be declared illegal, void, or unenforceable, the remaining provisions shall continue in full force and effect.

c) **Governing Law and Venue:** This Agreement shall be governed by and construed according to the laws of the State of Oklahoma as such laws are applied to contracts made and to be performed entirely in Oklahoma, excluding (i) that body of law known as conflicts of law and (ii) the United Nations Convention on Contracts for the International Sale of Goods, and all actions hereunder shall be brought in a federal or state court of competent jurisdiction sitting in Oklahoma and in no other jurisdiction, and the parties hereby consent to such Oklahoma jurisdiction.

d) **Assignment:** This Agreement is not assignable or transferable by Customer and any attempted assignment or transfer by Customer shall be null and void and of no force or effect. OK.gov may assign this Agreement and/or the payments due to OK.gov without notice to or requirement for Customer's permission or approval.

e) **Direct Debit (ACH) Option** shall mean that the Customer's banking institution automatically deducts the billed amount out of Customer's account with that institution on a monthly basis, as initiated by OK.gov or its agent.

f) **Credit Card Option** shall mean that the billed amount is automatically charged monthly to the Customer's credit card as initiated by OK.gov or its agent.

g) **Monthly Invoice/Check Option** shall mean that OK.gov bills Customer monthly; there is a \$15.00 minimum monthly fee that applies only if Customer has used less than \$15.00 in combined services in that month.

14. OK.gov is managed by Oklahoma Interactive, LLC, a wholly-owned indirect subsidiary of NIC Inc.

**Sections 15 through end, apply in conjunction with sections 1 through 14, where data is obtained for use in insurance underwriting or re-underwriting purposes or for CDL employee driving record verification purposes or where the consent of the Driver is obtained:**

## 15. Definitions of Terms.

a. **Agreement.** This instant contract or agreement to which these Terms and Conditions are attached.

b. **CDL.** Commercial driver's license.

c. **CDLEC.** A **Customer** who is an employer of a CDL employee and which has no Transferees.

d. **Customer.** The entity named as the applicant for data in Section A of the attached Driver Data Information Request and a party to this Agreement. The "**Customer**" represents herein that it either: (1) is

a company which obtains certain Underwriting or Re-underwriting data for its client-insurance companies ["Transferees" herein] or is an Oklahoma licensed motor vehicle insurer ["ICC" herein] dealing directly with **OK.gov** for its own insurance Underwriting or Re-underwriting and not for any Transferees, or (2) obtains data as an employer or agent or insurer for an employer for use in obtaining or verifying information relating to a holder of a commercial driver's license, or (3) obtains data with the written consent of the driver concerning whom the information pertains.

e. **DPS.** Oklahoma Department of Public Safety. DPS is not a party to this Agreement; however, it is a third party beneficiary of same and entitled to enforce its rights as such hereunder.

f. **Driver Licensee Records.** An MVR in Oklahoma.

g. **FMCSR.** Federal Motor Carrier Safety Regulations.

h. **ICC.** An Insurance Company **Customer** having no Transferees.

i. **MVR.** Motor Vehicle Record, which contains the driving records of a driver licensed in Oklahoma.

j. **MVR Data.** Information contained within an MVR.

k. **OK.gov.** OK.gov is a joint venture between the Oklahoma Office of State Finance and Oklahoma Interactive, LLC, a wholly-owned indirect subsidiary of NIC, Inc., and is a party to this Agreement. All rights granted to OK.gov pursuant to this Agreement may be duly enforced by either the Oklahoma Office of State Finance or Oklahoma Interactive, LLC.

l. **Protected Information.** Any and all personal, privileged and confidential information and data, including, but not limited to: personal identifiers, personal images, fingerprint images, names, addresses, telephone numbers, dates of birth, social security numbers, driver license numbers and medical or disability information.

m. **Re-underwrite.** The process of insurance risk analysis and evaluation associated with the renewal of a motor vehicle insurance policy.

n. **Security Event.** Unauthorized access or disclosure of an MVR, Abstract data or any Protected Information.

o. **Transferee.** A **Customer's** client Insurance Company which transfers inquiry requests to **Customer** and to whom is transmitted MVRs and MVR Data on that insurance company's insured or applicant for insurance. Also a **Customer's** client CDL employer which transfers inquiry requests to **Customer** and to whom is transmitted MVRs and MVR Data on that driver. Also a **Customer's** client who has obtained the written consent of a driver to obtain such information on that driver and to whom is transmitted an MVR and MVR Data on that driver.

p. **Underwriting.** The process of insurance risk analysis and evaluation associated with the issuance of a motor vehicle insurance policy.

16. **Terms of Use of MVR Data.** **OK.gov** shall furnish to **Customer** MVRs requested by **Customer** for only the purposes specified in the accompanying Data Information Request, subject to any limitations imposed by **DPS**. **Customer and its Transferees** shall be permitted to use such information solely for (a) the use set forth in the written consent given by the driver concerning whom the information pertains, or (b) the purpose of assisting **Customer** and its Transferees with Underwriting or Re-underwriting or driving record verification for CDL employment, as more specifically set forth herein. **Customer** acknowledges, and agrees to require its Transferees to acknowledge in writing, that each is only permitted to use such MVRs for the purposes specified in this section and **Customer** warrants, and agrees to require its Transferees to warrant in writing, that each will comply with such

usage restrictions. **Customer** agrees, and will require that its Transferees agree in writing, to use any such MVR transmitted hereunder by **OK.gov**, for motor vehicle insurance underwriting purposes or driving record verification for CDL employment or for the use set forth in the driver's written consent only, and furthermore, will only reveal the MVR and its data to the insurer of the driver referenced therein or to the driver himself, and to no other person or entity. **Customer agrees and will require its Transferees to agree in writing, that it and they may not use the MVR or data referenced therein for any purpose other than activities directly related to the particular purpose for which the MVR access is provided, i.e., Underwriting, or Re-underwriting, or CDL driving record verification, or compliance with FMCSR or the specific use set forth in the written consent given by the driver to whom the information pertains. Furthermore, Customer agrees, and will require that its Transferees agree in writing, that they may not give, sell, transfer or furnish any portion of the information contained in the MVR or MVR Data, to any other person or entity or use the information for any purpose other than as provided above. Except as specifically set forth to the contrary in the next sentence, Customer agrees, and will require that its Transferees agree in writing, to only use each MVR as herein provided once, for one Transferee or ICC or CDLEC, and to request and pay for a second copy of the MVR if the same is requested by Customer, or another Transferee, or by the same Transferee at a different time or date than that of the MVR furnished hereunder, and not to copy or duplicate any MVR or Data therein or any Protected Information contained therein, and after the use of same as aforesaid, to immediately shred and destroy said MVR and MVR Data and any and all copies thereof. Employers of CDL holders, however, may keep the initial MVR obtained upon employment, per FMCSR; and furthermore, such employers may retain each subsequent MVR obtained for the licensee's annual review, until replaced with a new annual review MVR.**

17. **Modifications of Use Restrictions.** **Customer** agrees that the above-referenced restrictions on the use of the MVR and MVR Data may be modified by **OK.gov** or **DPS** upon thirty (30) days written notice to **Customer**; however, any such modification by **OK.gov** must be approved in writing by **DPS**.

18. **Costs of Access.** **Customer** is responsible for all costs incurred by it for obtaining and maintaining access to the **OK.gov's** system. The **Customer** shall be responsible for its own communication fees. In addition, and pursuant to the fee authorized in 47 O.S. §6-117(D), and the convenience or portal fee authorized by 62 O.S. §34.25 as approved by the State Governmental Technology Applications Review Board under 62 O.S. §34.27, and the contract between **OK.gov** and **DPS**, the **Customer** hereby agrees to pay to **OK.gov**, subject to the provisions of §10(a) herein, the sum of \$27.50 per MVR provided to **Customer** by **OK.gov**, and said amount shall be paid pursuant to the terms hereof, including but not limited to §7 herein.

19. **Agreement Period and Renewal.** The term of this Agreement shall be one (1) year from the date of signing, unless earlier terminated pursuant to the terms of this Agreement, and may be renewed for successive (one) year terms, at the option of both parties hereto. Said Agreement will be deemed to have been renewed by both parties, unless one of the parties gives notice to the other party of non-renewal at least 45 days prior to the annual termination of the Agreement.

20. **Termination of Agreement.** All monies due hereunder shall continue to be due and owing after termination of this Agreement, including any early termination charge as set forth herein. Subject to the previous sentence, this Agreement may be terminated without liability for termination:

a. With thirty (30) days after delivery of written notice or 33 days after depositing written notice in the US Mails, postage prepaid, first class mail, to the addressee as set forth in the Notices section hereinafter;

b. Immediately by **OK.gov** or **DPS** upon any material breach of any covenant herein by **Customer** or a Transferee at the option of **OK.gov** or **DPS**, or upon cessation of the **DPS's** Agreement with **OK.gov** concerning Motor Vehicle Record Searches or upon cessation of the

**Customer's Registered Services Agreement.** A material breach includes, but is not limited to, the improper access, or the release, sale, or transfer of any Protected Information or the improper use of said information, any of which is contrary to any state or federal law, or the terms of the aforesaid agreements or the terms of this Agreement. Such a termination does not waive any liability, if any, for the aforesaid acts, including liability for the breach of this Agreement.

c. Immediately by **DPS** in the event state or federal funds used by **DPS** to support this Agreement become unavailable, either in full or in part, due to reductions in appropriations or otherwise.

d. Immediately by **DPS** in the event when this Agreement's continuance shall be an impediment to the function of **DPS** and detrimental to its cause, or when conditions preclude the aforesaid notice by **DPS**.

21. **Termination of Service.** Service shall be terminated upon termination or cancellation of this Agreement. In addition, for routine matters after 30 days advance notice posted on its web-site and instantly in the case of emergencies, and without prior termination of this Agreement, **OK.gov**, with the approval of **DPS**, reserves the right to withdraw, suspend, terminate and/or cancel any service hereunder at any time, without consulting **Customer** or its Transferees prior to withdrawing such service, and **Customer** agrees, and will require its Transferees to agree, that neither **OK.gov** nor **DPS** shall have any liability whatsoever to **Customer** or its Transferees in connection with the withdrawal or termination of any such service. All unpaid fees for services rendered hereunder prior to the termination of this Agreement or prior to the termination of services hereunder, shall be due and owing and must be paid by **Customer**.

22. **Required Modification or Termination of Agreement.** This Agreement is subject to change due to the issuance of court orders or changes in state and/or federal laws, rules and regulations governing access and use of the requested MVR information. If court orders are issued or if the laws, rules or regulations change such that the terms of this Agreement cannot be fulfilled, the Agreement will be automatically and immediately terminated and all unpaid fees associated with this Agreement will be due and owing.

23. **Notices.** It is understood by the parties hereto that any notice required under this Agreement shall be given either by personally delivery or through the United States Mails, posted prepaid, certified mail, return receipt requested, to the following addresses:

To **OK.gov:**  
Oklahoma Interactive, LLC  
Attention: President (LEGAL NOTICE)  
410 North Walnut, Suite 160  
Oklahoma City, OK 73104

with a copy to: General Counsel (LEGAL NOTICE)  
NIC, Inc.  
25501 West Valley Parkway, Suite 300  
Olathe, KS 66061

To **CUSTOMER:**

To **DPS**

If by US Mail:  
Oklahoma Department of Public Safety  
Commissioner of Public Safety  
PO Box 11415  
Oklahoma City, OK 73136

If by Courier:  
Oklahoma Department of Public Safety  
Commissioner of Public Safety  
3600 N. M.L. King Ave.  
Oklahoma City, OK 73111

24. **Indemnification.** **Customer** agrees to indemnify, hold harmless, and release **OK.gov, DPS**, the State of Oklahoma and Oklahoma Interactive, LLC and their agencies, divisions, sections, officers, agents, contractors, representatives, subcontractors and employees (collectively, the “Releases”) from and against any and all loss, damages of any kind, injury, claims, liability, court awards, suits and proceedings, including costs, expenses and attorneys’ fees, arising from the performance of this Agreement by **OK.gov**, its officers, agents, representatives, volunteers or employees; and except insofar (with respect to indemnity, hold harmless and release of the State of Oklahoma, its agencies and employees) as they may result from the actions or inactions of the State of Oklahoma, its agencies and employees; and except insofar (with respect to indemnity, hold harmless and release of **OK.gov**) as they may result from the actions or inactions of **OK.gov**, its officers, agents, contractors, subcontractors, or employees. **Customer** agrees to require, in writing, the same indemnity, hold harmless and release provisions in favor of **OK.gov, DPS** and the State of Oklahoma from each of **Customer’s** Transferees, and to provide **DPS** with a true and complete copy of same.

25. **Non-Exclusive Method of Obtaining MVRs for Underwriting.** It is understood by the parties hereto that this Agreement is to be an additional method by which insurance companies or their representatives may obtain driver record information for Underwriting or Re-underwriting purposes, or CDL Employment purposes, or for usages permitted by the written consent of the driver to whom the information pertains, and it is not intended to, nor shall it, take the place of or cancel any alternate system in place at both **OK.gov** and **DPS**, as such systems may be modified or altered from time to time, which provide some or all of this same information for Underwriting or Re-underwriting or CDL Employment or driver consent usages, or for other purposes legally permitted.

26. **Remedial Action.** **Customer** agrees, and shall require its Transferees to agree in writing, that it (and its Transferee) is subject to remedial action by **OK.gov** or **DPS** or both, in the event of violation of this Agreement. Such remedial action may include, but is not limited to, **Customer’s** suspension from access to DRMS for a fixed period of time, or the requirement that **Customer** suspend its Transferee from receiving MVR or MVR Data, to termination of the privilege of receiving access, or in the case of **Customer’s** Transferee, from receiving disclosure of MVRs or MVR Data and may include liability of **Customer** or **Customer’s** Transferee for damages.

27. **Security Procedures.** **Customer** agrees to implement commercially reasonable system and data security procedures to protect MVRs and MVR Data and Protected Information from unauthorized disclosure in transit and while in **Customer’s** possession, and to require **Customer’s** Transferees to agree in writing to do the same while the information is in their possession or in transit to or from Transferees. Such commercially reasonable procedures must include, but are not limited to, username and password access policies, firewalls, encryption of information during transmission, background investigations of employees or any other individuals authorized to access MVRs, MVR Data and Protected Information, and execution of confidentiality and non-disclosure agreements by such employees or other individuals with authorized access. Such security procedures shall be available for review by **OK.gov** or **DPS** upon request of either.

28. **Misuse of Services or Information.** **Customer** agrees, and will require its Transferees to agree, to take commercially reasonable and appropriate measures to protect against the misuse and/or unauthorized access of user identification numbers, passwords, Account IDs, MVRs, MVR Data, and Protected Information through any methods, including unauthorized access through or to any **Customer** or Transferees. Such misuse or unauthorized

access shall include, but not be limited to, any disclosure, release, viewing or other unauthorized access to Protected Information. **Customer** agrees, and will require its Transferees to agree, that either **OK.gov** or **DPS** may temporarily suspend **Customer's** and Transferees' access for up to ten (10) business days pending an investigation of **Customer's** and/or Transferees' use or access. **Customer** agrees, and will require each of its Transferees to agree in writing, to cooperate fully with any and all investigations into alleged misuse or unauthorized access. If any misuse or unauthorized access is found, **OK.gov** or **DPS** may immediately terminate this Agreement without notice or liability of any kind on the part of **DPS**.

29. **Customer Account Maintenance.** **Customer** agrees, and shall require its Transferees to agree in writing, that each is responsible for the administration of control of Account IDs by its employees and third parties, and each shall identify a security administrator to coordinate with **OK.gov** (and in the case of Transferees, to coordinate with **Customer**). **Customer** agrees it shall, and agrees to require its Transferees to agree in writing that they shall each, follow the policies and procedures of **OK.gov** and/or **DPS** with respect to account maintenance as same may be communicated to **Customer** from time to time. **Customer** agrees, and agrees to require its Transferees to agree in writing, that each shall, manage all their respective Account IDs and notify **OK.gov** promptly (and in the case of Transferees, notify **Customer** promptly) if any Account ID becomes inactive or invalid.

30. **Security Event.** In the event that **Customer** or any of its Transferees learns or has reason to believe that a MVR or MVR Data or Protected Information has been disclosed or accessed by an unauthorized entity or person, **Customer** agrees, and will require its Transferees to agree in writing, that it will **immediately** give both written and oral notice of such event to **OK.gov** and **DPS**. Furthermore, in the event that **Customer** or any of its Transferees has access to or acquires Protected Information under or by virtue of this Agreement, the following shall apply: **Customer** acknowledges and agrees to require its Transferees to acknowledge in writing that upon unauthorized disclosure or acquisition of such individual identifiable information (each a "Security Event"), **Customer** and any Transferee shall, in compliance with law, and in coordination with **OK.gov** and **DPS**, pay the cost to, and if required by law or **OK.gov** or **DPS**, to notify (and if so required shall coordinate the content of any such notice with **DPS** and **OK.gov**) the individuals whose information was disclosed that a Security Event has occurred. Also, **Customer** agrees and shall require its Transferees to agree in writing that each shall be responsible for any and all legal obligations which may arise under applicable law in connection with such a Security Event and shall bear all costs and expenses associated (1) with investigating and resolving the Security Event, and (2) with the required notices.

31. **Documentation, Document Retention and Audit Clause.**

**A. Customer.** **Customer** agrees to keep and maintain in accordance with commercially reasonable data archive standards, for a period of time equal to five years after the last date that the **Customer** has an Agreement with **OK.gov** in force to participate to acquire MVRs, Protected Information, books and records, including financial accounts:

- i. documenting disclosure of any MVR or MVR Data or Protected Information under **Customer's** possession or control;
- ii. documenting **Customer's** systems and operation for handling of and safeguarding from unauthorized disclosure of MVRs, MVR Data and Protected information;
- iii. documenting **Customer's** compliance with the other terms and conditions of this Agreement and the Transferee's agreement with **Customer**; and
- iv. documenting said **Customer's** and its Transferee's qualifications to obtain the MVR, MVR Data and Protected Information, if applicable.

**B. Customer's Transferees.** **Customer** agrees to require its Transferees to agree in writing to keep and maintain, in accordance with commercially reasonable data archive standards, for a period of time equal to five years after the last date **Customer's** Transferee has an agreement with **Customer** to participate in the acquisition of

MVRs, MVR Data, Protected Information, books and records, including financial accounts:

- i. documenting disclosure of any MVR or MVR Data which is under said Transferee's possession or control;
- ii. documenting said Transferee's systems and operation for handling of and safeguarding from unauthorized disclosure of MVRs, MVR Data and Protected Information;
- iii. documenting said Transferee's compliance with the other terms and conditions of this Agreement and the Transferee's agreement with **Customer**; and
- iv. documenting said Transferee's qualifications to obtain the MVRs, MVR Data and Protected Information, if applicable.

**C. Customer** will make available, and agrees to require its Transferees to agree to make available, to **OK.gov**, **DPS** or the authorized representative of either of them or the State of Oklahoma, at any reasonable time, all such books and records including financial accounts, for auditing, compliance and monitoring purposes. Either **OK.gov** or **DPS** or the State of Oklahoma shall have the right, but not the obligation, to conduct any inquiry or audit hereunder.

32. **Report of Breaches.** **Customer** shall report in writing to **OK.gov**, and shall require that its Transferees report in writing to **Customer** who shall then report in writing to **OK.gov**, and **OK.gov** shall report in writing to **DPS**, the following occurrences no later than twenty-four (24) hours of discovery:

- a. any Security Event, or any breach of security or confidentiality or prohibition against dissemination of Protected Information involving a MVR or MVR Data or Protected Information furnished to **Customer** or from **Customer** to **Customer's** Transferee;
- b. any litigation involving MVR or MVR Data or Protected Information furnished to **Customer** or from **Customer** to its Transferee;
- c. any breach of this Agreement and any breach of **Customer's** written agreement with **Customer's** Transferee, or any breach of **Customer's** written agreement with **OK.gov** or **DPS**, related to use, dissemination, security, confidentiality or protection of MVRs, MVR Data or Protected Information.

33. **Ownership.** **Customer** acknowledges and will require its Transferees to acknowledge in writing that **DPS** retains all right, title, and interest in and to all data and information transmitted from **DPS** to **Customer** and to **Customer's** Transferees hereunder, and that **Customer** and its Transferees are given a limited license to use said information according to the strict terms and conditions set forth herein, and consistent with **DPS's** right, title and exclusive interest in and to said data and information.

34. **Customer Use Limitations - Fair Credit Reporting Act.** **Customer** agrees, and will require its Transferees to agree in writing, not to use information and data contained in any MVR for consumer credit purposes, consumer insurance underwriting (other than "Underwriting" as defined in this Agreement), employment purposes, tenant screening purposes, or for any other purpose(s) covered by the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681, *et seq.*) ("FCA"), or similar state statute.

35. **Customer Use Limitations - Driver's Privacy Protection Act.** **Customer** agrees, and will require its Transferees to agree in writing, to use any **DPS** data, which is the subject of this Agreement, in strict conformance with the Federal Drivers Privacy Protection Act (18 U.S.C. Section 2721, *et seq.*) ("DPPA") and similar state statutes, including but not limited to 47 O.S. §2-110(F), if applicable and will certify its permissible purpose to **DPS**.

36. **Customer Use Limitations - Gramm-Leach Bliley Act.** **Customer** agrees, and will require its Transferees to agree in writing, to use any **DPS** data, which is the subject of this Agreement, in strict conformance with the Gramm-Leach Bliley Act (U.S.C. Title 15, Chapter 94, Section 6801, *et seq.*) and similar state statutes, if applicable and will certify its permissible purpose to **DPS**.

37. **Customer Use Limitations - Creation of Driving History Database Prohibited.** **Customer** agrees, and will require its Transferees to agree in writing, not to use any MVR or MVR Data, or portions of information contained therein, or Personal information, to create or update a file to the end that **Customer** or any of its Transferees develops its own source of driving history information.

38. **Force Majeure.** To the extent permitted by Oklahoma law, neither party shall be liable to the other for any delay or failure to perform its obligations under this Agreement if the prevention from doing so results directly or indirectly from a cause or causes which could not with reasonable diligence be controlled or prevented by the party, and are otherwise referred to as Acts of God, including but not limited to, governmental close of offices, civil disobedience, war, riot, civil or military authority, fire, explosion, acts of nature, earthquake, flood, wind, hurricane, tornado, inclement weather, injunction, delays in transportation, strike, lock-out, labor disputes, action of a labor union and the action of an intermediate electronic service provider.

39. **Invalidity/Severability.** If any part of this Agreement is contrary to the Constitution or laws of this state, or of the United States, then to the extent that the purpose of the Agreement may be realized without the part, the provision shall be void and unenforceable; and if any part of this Agreement is ever ruled to be invalid, illegal, void or unenforceable by a court or other body of competent jurisdiction, the remainder of this Agreement, to the extent it is possible to realize the purpose of the Agreement without such part, shall continue in full force and effect and shall be deemed modified to the minimum extent necessary to make it enforceable; PROVIDED, however, if the ruling in question is subsequently overruled or obviated by Legislative or other lawful action, the severed provision(s) of this Agreement shall return to full force and effect.

40. **Employment Relationship.** This Agreement does not create an employment relationship. Individuals performing services on behalf of either **OK.gov** or **Customer** or a Transferee and required by this Agreement to do so, are neither employees of the State of Oklahoma nor employees of **DPS**. Neither **OK.gov's** nor **Customer's** nor a Transferee's employees shall be considered employees of the State of Oklahoma or **DPS** for any purpose and as such shall not be eligible for benefits accruing to state employees.

41. **Legal Representative of DPS.** Nothing herein contained shall be construed to make **DPS** a partner or joint venturer, nor any party hereto the legal representative or agent of **DPS**, nor shall any party hereto have the right or authority to assume, create or incur any liability or any obligation of any kind, either expressed or implied, in the name of or on behalf of **DPS**.

42. **Duly Authorized Agents.** Each of the undersigned representatives of the parties hereto is the respective party's duly authorized agent empowered to enter into this Agreement for and on behalf of the respective party-principal.

43. **Disclaimer of Any Warranty.** **CUSTOMER** AGREES, AND WILL REQUIRE ITS TRANSFEREES TO AGREE IN WRITING, TO ACCEPT ALL DATA AND INFORMATION FROM **DPS** "AS IS" WITH ALL FAULTS, DEFECTS AND INACCURACIES AND WITH NO WARRANTY AS TO ACCURACY. THERE ARE NO WARRANTIES GRANTED EITHER BY **OK.GOV** OR BY **DPS** WHETHER EXPRESS OR IMPLIED, INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

44. **Limitation of Liability.** In no event shall **OK.gov** or **DPS** or their directors, officers, or employees be liable for special, indirect, incidental or consequential damages, including, but not limited to loss of income or lost revenues, whether such damages arise out of breach of contract, negligence, strict liability, or any other theory of liability. Except for the contractual relationship and liabilities and obligations between **OK.gov** and **DPS** covered under separate contract, neither **OK.gov** nor **DPS** shall be liable for any claim or demand of any nature or kind by any party hereto or any other person or entity arising out of the information or services provided, MVRs or MVR Data, including Protected Information, or resulting from the failure to provide such services or information, or for the improper use or protection of that information. **Customer** agrees, and will require its Transferees to agree in writing, that each indemnifies and holds harmless **OK.gov** and **DPS** from any liability on any claim or demand of any nature or kind by any third party, arising out of the services or information provided by **OK.gov** or **DPS** or the **Customer's** or its Transferees' use of same. **Customer** agrees, and will require its Transferees to agree in writing, that neither **OK.gov** **ANGER** nor **DPS** shall be liable to **Customer**, its Transferees or any other person or entity for any delay or failure in performance hereunder.

45. **Confidentiality and Non-Disclosure.** **Customer** agrees, and will require its Transferees to agree in writing, that no information transmitted by **DPS** to **Customer** and/or its Transferees maybe be disclosed or used except as explicitly set forth in this Agreement, as virtually all of said information is confidential and privileged, including but not limited to, all Protected Information.

46. **Compliance with Laws.** **Customer** warrants, and agrees to require its Transferees to warrant in writing, that each is aware of, and will comply with, all applicable federal, state, and other laws with regard to, access to, or use of, any and all information, databases, programs, and other products to which access is provided by or through **OK.gov**.

47. **Entire Agreement.** This Agreement, along with **Customer's** "Registered Services Agreement from Oklahoma", as amended, as well as the "Oklahoma Driver's Privacy Protection Act Agreement", as amended, constitute the entire Agreement of the parties and supersede all other prior written or oral agreements between the parties with respect to the DRMS. This Agreement may be changed, modified, or amended at any time, but only by an instrument in writing, signed by duly authorized representatives of all parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed by their duly authorized representatives, by attachment to the **Customer's** Driver Data Information Request, effective as of the date of the acceptance hereof by **OK.gov**.