

AGREEMENT
BETWEEN
GEORGIA TECHNOLOGY AUTHORITY
AND

This Bulk User Agreement ("Agreement") is entered into by and between the GeorgiaNet Division of the Georgia Technology Authority, hereinafter referred to as "GTA," and _____, hereinafter referred to as "Bulk User," with its principal office at:

GTA and Bulk User shall be collectively referred to as the "parties."

WHEREAS, pursuant to O.C.G.A. § 40-5-2, GTA has the authority to contract for the electronic furnishing of certain records maintained and compiled by the Georgia Department of Driver Services for certain specific statutory purposes; and

WHEREAS, Bulk User desires to obtain abstracts of multiple driver records of individuals licensed by the Georgia Department of Driver Services for specific uses related to motor vehicle insurance or employment information verification as allowed under Georgia Law;

NOW THEREFORE, in consideration of the promises and agreements hereinafter set forth, the parties hereby agree as follows:

1. Purpose

The purpose of this Agreement is to set out the terms and conditions under which GTA will disclose to Bulk User certain information contained within the official driver records maintained and compiled by the Georgia Department of Driver Services. The use of said driver records information shall be exclusively in connection with either the:

- (i) claims investigation, antifraud activities, rating, or underwriting of motor vehicle insurance; or
- (ii) verification of information provided by the individual whose record is being requested pursuant to a credit agreement; or,
- (iii) verification of information provided by the individual whose record is being requested as part of an employment process.

Information released to the Bulk User under this Agreement is subject to limitations imposed by O.C.G.A. § 40-5-2, the rules and regulations promulgated by the Georgia Department of Driver Services, and the provisions set forth within this Agreement. Such limitations include, but are not limited to, any written authorizations or consents required by the Georgia Department of Driver Services or by law.

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2. Definitions

- a. "MVR" or "Motor Vehicle Record" or "Record" shall mean the applicable abstract of an individual Driver's Record licensed to Bulk User under this Agreement. Pursuant to O.C.G.A. § 40-5-2, the contents of the abstract will vary according to the use for which the abstract is requested.
- b. "Bulk User" shall mean the party entering into this Agreement who is certified as a Bulk User by the Georgia Department of Driver Services as evidenced by GTA's receipt of a valid copy of the entity's Bulk User Certificate from the Georgia Department of Driver Services.

3. License

- a. *License Grant.* During the term of this Agreement, subject to the terms and conditions stated herein, GTA grants Bulk User a nonexclusive, nontransferable limited license to access and retrieve certain MVRs contained in GTA's Database, at such times as GTA makes said MVRs available to Bulk User, for use in the normal course of Bulk User's internal business.
- b. *Limitation of License.* Except as specifically provided herein, no MVR, either in whole or in part may be published, transmitted, sold or otherwise disclosed, in any form or by any means to another person, company or entity, except as may otherwise be required by federal or state law, without the express written consent of the Georgia Department of Driver Services.
- c. *Ownership of Records.* Except for the license granted herein, all rights, title and interests in the MVRs in all languages, formats and media throughout the world are and shall continue to be the exclusive property of the Georgia Department of Driver Services.

4. Services

- a. Subject to terms and conditions set forth in this Agreement, GTA shall provide to Bulk User such MVRs as are properly requested in an electronic format as specified by GTA.
- b. Each request for an MVR submitted by Bulk User shall include: (i) the driver's name, (ii) date of birth, (iii) license number or Social Security Number, (iv) use or purpose in requesting the MVR, (v) length of time for which the MVR is sought (3 or 7 year record) and (vi) all parties who will receive the report.

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5. Restrictions on Use of Records

- a. Bulk User shall take all necessary measures to ensure that the MVRs requested and received by Bulk User shall be exclusively used for the purposes of:
- (i) claims investigation, antifraud activities, rating, or underwriting of motor vehicle insurance; or
 - (ii) verification of information provided by the individual whose record is being requested pursuant to a credit agreement; or,
 - (iii) verification of information provided by the individual whose record is being requested for employment or pre-employment information verification purposes.

All such uses shall be subject to limitations imposed by O.C.G.A. § 40-5-2, the rules and regulations promulgated by the Georgia Department of Driver Services, and the limitations set forth in this Agreement.

- b. Bulk User shall not disclose, supply, or resell MVRs to any other person or company.

6. Audit

- a. Bulk User's documentation supporting the reason for the Record request, including but not limited to transaction details, computer software and programs maintained for the purposes defined in this agreement, shall be subject to inspection, review or audit by GTA, the Georgia Department of Driver Services or their respective representatives for a period of four years from the date of the request at no cost to GTA or the Georgia Department of Driver Services. Bulk User agrees to accommodate GTA's or the Georgia Department of Driver Services's request for an inspection, review or audit on one business day's notice and to allow on-site audits during regular business hours.
- b. Bulk User shall maintain a log of each request for a MVR for a period of four years from the date of the request. The log shall be immediately available for review at GTA's or the Georgia Department of Driver Services's request. Bulk User shall provide an electronic or "hard" copy of such log upon request. The log format shall provide the following in the order presented: (i) Date of request, (ii) all information specified in **Section 4(b)** of this Agreement, and identity of person/entity to whom the information was provided.

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7. Representations and Warranties

- a. Bulk User represents and warrants that it is a Bulk User as designated by the Georgia Department of Driver Services, and as evidenced by a copy of the Bulk User certificate transmitted to GTA by the Georgia Department of Driver Services, which is appended to this Agreement as Attachment A.
- b. Bulk User warrants that it will maintain its Bulk User status by timely filing a Bulk User certification application every two years with the Georgia Department of Driver Services. Bulk User acknowledges that their status as a Bulk User is dependent on GTA receiving evidence of such certification from the Georgia Department of Driver Services.
- c. Bulk User warrants that it shall take all measures necessary to ensure that the MVRs supplied to Bulk User by GTA will not be divulged, supplied, sold, assigned or transferred to any other person or company except as provided in this Agreement.
- d. Bulk User warrants that it shall only use the MVRs transferred to them solely for their internal business purposes authorized under Georgia Law.

8. Remedies

- a. Any breach by Bulk User of the representations, warranties, restrictions, terms, or conditions contained in this agreement constitutes a material breach and shall be grounds for GTA, in its sole discretion, to suspend the services provided by GTA under this Agreement or terminate this Agreement immediately and without notice. Bulk User acknowledges that certain breaches by Bulk User may result in criminal liability.
- b. Bulk User agrees and acknowledges that a breach of material term(s) of the Agreement shall cause immediate and irreparable harm and damage to the State of Georgia, in which event GTA and/or the State of Georgia shall be immediately entitled to injunctive relief and a return of all Licensed Records without any rebate of any fees or payments, in addition to any other rights and remedies to which it may be entitled, at law or in equity.
- c. If Bulk User does not make timely payments under the provisions of **Section 10** of this Agreement, GTA may terminate this Agreement or suspend the services provided under this Agreement to Bulk User until such time as Bulk User pays to GTA the full amount due to it. GTA will charge Bulk User one and one-half percent (1.5%) interest per month on its unpaid balance or may exercise any other remedies provided by law.
- d. The remedies of termination or suspension of this Agreement shall not be deemed to be exclusive remedies, but rather shall be in addition to all other remedies which may be available to GTA. Termination of this Agreement shall release GTA from any and all obligations under this Agreement, but shall not

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bar GTA from pursuing any remedies it would otherwise have against Bulk User.

- e. Failure to maintain or revocation of an entity's Bulk User certification by the Georgia Department of Driver Services shall be grounds for GTA to immediately terminate or suspend the services provided under this Agreement.

9. Term

- a. This Agreement will become effective on the date it is signed and accepted by GTA, superseding and replacing any and all existing Agreements with Bulk User for the services and subject matter contained herein.
- b. This Agreement will continue in force until terminated by either party upon thirty (30) days' written notice to the other party, or if otherwise terminated under the terms of this Agreement.

10. Charges and Payment Procedures

- a. Bulk User shall compensate GTA according to the following schedule:
 - (i) \$6.00 per request for each three (3) year MVR requested
 - (ii) \$8.00 per request for each seven (7) year MVR requested
- b. Each month GTA will send to Bulk User an invoice for all charges incurred by Bulk User during the preceding month, subject to adjustments, if any. Within thirty (30) days of receipt of any invoice, Bulk User will pay to GTA the full amount payable thereunder. If Bulk User does not make timely payment, GTA may terminate this Agreement or suspend the services provided under this Agreement to Bulk User until such time as Bulk User pays to GTA the full amount due to it. GTA will charge Bulk User one and one-half percent (1.5%) interest per month on its unpaid balance or may exercise any other remedies provided by law.
- c. GTA will make an appropriate adjustment to any amount paid or payable by Bulk User for any use of the services which results in faulty retrieval, failure of retrieval, or a loss of retrieved data, except that caused by improper use of the services by Bulk User; provided, however, that Bulk User reports to GTA any such loss immediately upon discovery. These obligations are the full extent of GTA's responsibility to Bulk User for loss; AND IN NO EVENT WILL GTA BE LIABLE TO BULK USER FOR GENERAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL OR LIKE DAMAGES RESULTING IN WHOLE OR IN PART FROM BULK USER'S USE OF THE SERVICES OR RECORDS PROVIDED UNDER THIS AGREEMENT.

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11. Indemnification

- a. Bulk User agrees to indemnify the "State" and to hold it harmless from all loss and liability, in any way caused, in whole or in part, by act or omission of Bulk User in connection with this Agreement.

For purposes of this indemnification,

"State" means the Georgia Technology Authority, the Georgia Department of Driver Services, all other departments and units of the state government, all state instrumentalities, and all their officers and employees, plus the insurance programs of the Department of Administrative Services established for their protection.

"Bulk User" includes successors and assigns. In the clause, "caused, in whole or in part, by act or omission of Bulk User," "Bulk User" also includes Bulk User's subcontractors, all others acting on their behalf, and their officers and employees.

This obligation survives the expiration and termination of the Agreement, the dissolution of the Bulk User and, to the extent allowed by law, the bankruptcy of the Bulk User.

- b. The Georgia Tort Claims Act will be the exclusive remedy for any loss or liability within its terms. However, upon demand, Bulk User will promptly reimburse the following for any payments made by them, which are covered by Bulk User's obligation to indemnify: the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the "Funds") established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter "DOAS").

This indemnification applies even if the State is partially responsible for the situation giving rise to the claim, but not if the State is solely responsible.

12. Disclaimer of Warranties

THE RECORDS AND SERVICES PROVIDED BY GTA UNDER THIS AGREEMENT ARE PROVIDED AS IS WITHOUT WARRANTY AS TO ACCURACY OR COMPLETENESS. TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, ALL CONDITIONS, WARRANTIES, REPRESENTATIONS, LIABILITIES AND OBLIGATIONS, WHETHER EXPRESSED OR IMPLIED, ARISING FROM NEGLIGENCE OR IMPOSED BY STATUTE OR OTHERWISE IN RESPECT TO THE SUPPLY OF MVRs OR ANY RELATED SERVICES HEREUNDER, INCLUDING ANY CONDITIONS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR AS TO CORRESPONDENCE WITH DESCRIPTION, ARE HEREBY DISCLAIMED BY GTA.

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13. Relationship of Parties

The relationship of GTA and Bulk User established by this Agreement is of licensor and licensee/independent contractors, and nothing in this agreement shall be construed: (1) to give either party the power to direct or control the daily activities of the other party or (2) to constitute the parties as principal and agent, employer and employee, franchiser and franchisee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. GTA and Bulk User understand and agree that GTA does not grant Bulk User the power or authority to make or give any agreement, statement, representation, warranty or other commitment on behalf of GTA or to enter into any contract or otherwise incur any liability or obligation, express or implied, on behalf of GTA, or to transfer, release or waive any right, title or interest of GTA, except as expressly allowed within this Agreement.

14. Force Majeure

The parties hereto shall not be responsible for any failure or delay in the performance of any obligations hereunder caused by Acts of God, flood, fire, war or public enemy.

15. Waiver and Severability

No failure, delay in exercising or enforcing any right or remedy hereunder by GTA shall constitute a waiver of any other right or remedy, or future exercise thereof. If any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent deemed to be omitted, and the balance of the Agreement shall remain enforceable.

16. Taxes

All federal state, local and other taxes due, if any, under this Agreement, shall be the responsibility of the Bulk User.

17. Compliance with all Laws

Bulk User shall comply with all laws, ordinances, rules and regulations of any governmental entity pertaining to its performance pursuant to this Agreement, including, but not limited to 18 U.S.C. § 2721, O.C.G.A. § 40-5-2 *et seq.*, the rules and regulations promulgated by the Georgia Department of Driver Services, or any other rule or law enacted hereafter.

18. Choice of Law

This Agreement shall be governed by the laws of the State of Georgia, without application of conflicts of laws principles. Any suit brought pursuant to this Agreement against the State of Georgia or GTA shall be filed exclusively in the Superior Court of Fulton County, Georgia, and in no other jurisdiction.

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19. Authority

Bulk User acknowledges it has full power and authority to enter into and perform this Agreement, and the person signing on behalf of Bulk User has been properly authorized and empowered to enter into this Contract. Each party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

20. Assignment

Performance under this Agreement shall not be assigned or subcontracted without the prior written consent of GTA.

21. Headings

The paragraph headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

22. Amendments in Writing

No amendment to this Agreement shall be effective unless it is in writing and signed by the parties.

23. Notice

All notices under this Agreement shall be deemed duly given upon delivery, if delivered by certified mail to the party at the address set forth as follows:

GTA:

Georgia Technology Authority
47 Trinity Avenue
Atlanta, Georgia 30334
Attn: Office of Data Sales

Bulk User:

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24. Survival

The respective rights and obligations of the parties under **Sections 5, 6, 7, 8, 10, 11, and 12** shall survive any termination or expiration of this Agreement.

25. Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations and undertakings, are superseded hereby.

IN WITNESS WHEREOF, each party, by its respective officers authorized so to do, has executed this Agreement.

AGREED:

Georgia Technology Authority

Bulk User: _____

By: _____

By: _____

Name: Ivan Sumter

Name: _____

Title: Director, Office of Data Sales

Title: _____

Date: _____

Date: _____