

**AGREEMENT FOR
RELEASE OF DRIVER RECORDS
TO GOVERNMENTAL ENTITIES**

This document constitutes an ("Agreement") made between the Texas Department of Public Safety ("TXDPS"), which is the state administrator for driver license and identification card records, and the Governmental Entity identified below ("the Governmental Entity"), which shall be referred to herein as "the Parties."

Governmental Entity Name: Texas Facilities Commission (TFC)

Address: P.O. Box 13047, Austin, Texas 78711-3047

WHEREAS, Texas law authorizes TXDPS to provide Driver Records individually and in bulk for specified permissible purposes;

WHEREAS, Texas law authorizes TXDPS to establish an Interactive System to provide the release of Driver Records;

WHEREAS, state and federal law, including the federal Driver's Privacy Protection Act of 1994 (18 U.S.C. §2721 *et seq.*) and the Texas Motor Vehicle Records Disclosure Act (Chapter 730 of the Texas Transportation Code) extend privacy protections to Personal Information maintained in the files of state motor vehicle agencies such as TXDPS;

WHEREAS, the Governmental Entity desires to obtain Driver Records, including Personal Information, from TXDPS; and

WHEREAS, Texas law requires each prospective Governmental Entity to execute a written agreement or contract containing safeguards TXDPS considers necessary or reasonable to ensure that Driver Records obtained are used only for permissible purposes and that the rights of individuals and TXDPS are protected before the Governmental Entity receives any Driver Records.

THEREFORE, IT IS AGREED, that TXDPS shall deliver Driver Records in an electronic format to the Governmental Entity, subject to the following terms and conditions:

1. Definitions:

- a. **Driver Records** means a record that pertains to a motor vehicle operator or driver license or permit, or identification document issued by TXDPS. It includes the following types of records: Type 1 (status record); Type 2 (a 3-year driving history record); Type 3 (a list of all crashes and violations in the record for commercial drivers only); and Type 4 (school bus driver records).
- b. **Interactive System** means the process by which TXDPS supplies Driver Records in an electronic format, including real-time and batch web-based applications.

- c. **Personal Information** means information that identifies an individual, including but not limited to an individual's date of birth, driver license number or identification card number, name, and address.

2. Certification of Permissible Use(s):

The Governmental Entity, by signing this Agreement, hereby certifies compliance with all provisions of the federal Driver's Privacy Protection Act of 1994, the Texas Motor Vehicle Records Disclosure Act, and with all other state and federal laws applicable to this Agreement. The Governmental Entity certifies that its use of Driver Records obtained under this Agreement is for the following permissible purpose(s) only and for no others:

Initial all that apply.

1. For use in connection with any matter of: (a) motor vehicle or motor vehicle operator safety; (b) motor vehicle theft; (c) motor vehicle emissions; (d) motor vehicle product alterations, recalls, or advisories; (e) performance monitoring of motor vehicles or motor vehicle dealers by a motor vehicle manufacturer; (f) removal of nonowner records from the original owner records of a motor vehicle manufacturer to carry out the purposes of: the Automobile Information Disclosure Act, 15 U.S.C. Section 1231 *et seq.*; 49 U.S.C. Chapters 301, 305, 323, 325, 327, 329, and 331; the Anti Car Theft Act of 1992, 18 U.S.C. Sections 553, 981, 982, 2119, 2312, 2313, and 2322, 19 U.S.C. Sections 1646b and 1646c, and 42 U.S.C. Section 3750a *et seq.*, all as amended; the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*, as amended; and any other statute or regulation enacted or adopted under or in relation to a law included in this subsection; (g) child support enforcement under Chapter 231, Family Code; or (h) enforcement by the Texas Workforce Commission under Title 4, Labor Code.
2. For use by a government agency, including any court or law enforcement agency, in carrying out its functions or a private person or entity acting on behalf of a government agency in carrying out the functions of the agency.
3. For use in connection with a matter of: (a) motor vehicle or motor vehicle operator safety; (b) motor vehicle theft; (c) motor vehicle product alterations, recalls, or advisories; (d) performance monitoring of motor vehicles, motor vehicle parts, or motor vehicle dealers; (e) motor vehicle market research activities, including survey research; or (f) removal of nonowner records from the original owner records of motor vehicle manufacturers.
4. For use in the normal course of business by a legitimate business or an authorized agent of the business, but only to verify the accuracy of Personal Information submitted by the individual to the business or the authorized agent of the business; and, if the information is not correct, to obtain the correct information for the sole

- purpose of preventing fraud by pursuing a legal remedy against or recovering on a debt or security interest against the individual.
5. For use in conjunction with a civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, execution or enforcement of a judgment or order, or under an order of any court.
6. For use in research or in producing statistical reports, but only if the Personal Information is not published, redisclosed, or used to contact any individual.
7. For use by an insurer or insurance support organization, or by a self insured entity, or an authorized agency of the entity in connection with claims investigation activities, antifraud activities, rating, or underwriting.
8. For use in providing notice to an owner of a towed or impounded vehicle.
9. For use by a licensed private investigator agency or licensed security service for a purpose permitted as stated herein.
10. For use by an employer or an authorized agent or insurer of the employer to obtain or verify information relating to a holder of a commercial driver's license that is required under 49 U.S.C. Chapter 313.
11. For use in connection with the operation of a private toll transportation facility.
12. For use by a consumer reporting agency, as defined by the Fair Credit Reporting Act (15 U.S.C. §1681 *et seq.*), for a purpose permitted under that Act.
13. For use in the prevention, detection, or protection against personal identity theft or other acts of fraud. Prior to release of Personal Information, TXDPS may require additional information.
14. For any other purpose specifically authorized by law that relates to the operation of a motor vehicle or to public safety. Please provide the statutory authority:

The Governmental Entity shall restrict access to, use of, and disclosure of Driver Records, including Personal Information, to designated personnel solely for the purposes as identified herein. Access to and use of Driver Records by the Government Entity's personnel that are not authorized is strictly prohibited. Any access, use and disclosure not required for the purposes of this Agreement or for any unofficial purpose is strictly prohibited. Violation of the federal Driver's Privacy Protection Act or the Texas Motor Vehicle Records Disclosure Act may result in civil and criminal penalties.

3. Resell or Redisclosure:

The Governmental Entity shall not resell or redisclose Personal Information obtained under this Agreement to third parties in the identical or a substantially identical format. The Governmental Entity may resell or redisclose Personal Information only for a use authorized by Texas Transportation Code, Section 730.007, and in compliance with the sections herein entitled "Record Creation and Retention" and "Provide Copies of Records and Notification of Release." Personal Information under the Driver's Privacy Protection Act and the Texas Motor Vehicle Records Disclosure Act is not subject to the Texas Public Information Act.

4. Record Creation and Retention:

If the Governmental Entity legally resells or rediscloses Personal Information obtained from Driver Records under this Agreement, the Governmental Entity shall create a record identifying each person or entity that obtained Personal Information from the Governmental Entity and the legally permissible purpose for which Driver Records were obtained. The Governmental Entity shall ensure that any third party to which it releases any Driver Records shall comply with all federal and state laws on the release of the information and all terms, conditions, and obligations of this Agreement. The Governmental Entity shall retain such records for a period of not less than five (5) years following transfer of Driver Records to the third party of the following: the name of any person or entity to whom the release was made; the date the release was made; the permitted use for which Driver Records were released; the written agreement with the third party; and contact information for the person or entity Driver Records were released to.

5. Provide Copies of Records and Notification of Release:

If the Governmental Entity rediscloses any Driver Records obtained under this Agreement to a third party, the Governmental Entity shall provide access to or copies of those records required in the section herein entitled "Record Creation and Retention" to TXDPS immediately upon TXDPS' request. TXDPS retains the right to require the records in any applicable format, including electronic or paper. The Governmental Entity shall bear the expense of providing this information to TXDPS, including any postage or shipping charges.

6. Unauthorized Disclosure:

The Governmental Entity shall immediately, but no later than two (2) calendar days, notify TXDPS of any inadvertent or unauthorized release, disclosure, breach, or compromise of Driver Records obtained under this Agreement as soon as the Governmental Entity knows or should have known of such unauthorized or inadvertent release, disclosure, breach, or compromise of security. This obligation applies whether the action or omission was by the Governmental Entity, its employees or agents, or by any person or entity that acquired Driver Records from the Governmental Entity, either directly or indirectly. The Governmental Entity shall notify TXDPS of any breach of system security as required by Section 521.053(c) of the Texas Business and Commerce Code, and shall cooperate fully with TXDPS in any investigation thereof.

7. Fees:

Pursuant to Texas Transportation Code Section 521.049, TXDPS shall not charge a fee for Driver Records disclosed to a law enforcement or other governmental agency for an official

purpose, unless the Governmental Entity requests Driver Records sold in bulk for research purposes. A Governmental Entity obtaining Driver Records for research shall enter into a separate contract with TXDPS to purchase Driver Records for a fee.

8. Acknowledgement and Disclaimer:

The Governmental Entity acknowledges that TXDPS is furnishing Driver Records on an "as is" basis and TXDPS makes no representation or warranty as to the accuracy of any Driver Records furnished. TXDPS expressly disclaims responsibility for any failure to deliver Driver Records in a timely manner, or at all, in the event of staff shortages, failures of appropriations, breakdown of equipment, compliance with new or amended laws, acts of authority exercised by a public official, acts of God, or other circumstances which may delay or preclude furnishing Driver Records in a timely fashion. If Driver Records are not furnished, TXDPS has no further responsibility or liability to the Governmental Entity with respect to undelivered Driver Records and has no liability or responsibility whatsoever for delayed Driver Records.

9. Consumer Protection:

Driver Records furnished under this Agreement shall not be used by the Governmental Entity to engage in any method, act, or practice that is unfair or deceptive, nor shall Driver Records be used for marketing, solicitations, or surveys not authorized by law.

10. Direct Access to Driver Records:

No member of the public or any person outside the direct employ or control of the Governmental Entity shall be permitted direct access to Driver Records through the Governmental Entity under this Agreement for any reason other than the Governmental Entity's intended and legitimate use of Driver Records.

11. Assignability:

The Governmental Entity shall not assign, license, or transfer any of its rights, duties, and obligations under this Agreement without the prior written consent of TXDPS. An attempted assignment in violation of this section is null and void. Any approved assignment shall not relieve the assignor of any liability or obligation under this Agreement.

12. Successors:

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, heirs, administrators, personal representatives, legal representatives, and permitted assigns.

13. Incorporation of Other Documents:

This Agreement, including "Attachment A, Governmental Entity Information Form," constitutes the entire agreement between the Parties with regard to the matters made the subject of this Agreement. There are no verbal representations, inducements, agreements, understandings, representations, warranties, or restrictions between the Parties other than those specifically set forth herein.

14. Interactive System for Driver Records:

The Interactive System for Driver Records, by which TXDPS supplies Driver Records in an electronic format including real-time and batch web-based applications, is operated and controlled by a State of Texas Vendor. The State of Texas Vendor is the duly authorized service agent of TXDPS responsible for processing electronically submitted Driver Records requests and delivering Driver Records in a secure, electronic format utilizing the Interactive System. The State of Texas Vendor is obligated to specific performance level requirements. As such, the State of Texas Vendor has the authority to suspend any Governmental Entity account or access to the Interactive System when such access compromises the operation of the Interactive System. Suspension of such account or access shall continue until the compromising condition is resolved to the satisfaction of TXDPS.

15. Term of Agreement:

The term of this Agreement shall begin on the date it is signed by the last of the two Parties to this Agreement and shall continue in full force and effect for a term of three (3) years. Upon an amendment in writing to this Agreement executed by both Parties, this Agreement may be renewed for intervals of three (3) year at a time.

16. Termination:

- a. **For Convenience:** Either Party may terminate this Agreement for convenience at any time for any reason by giving the other Party thirty (30) calendar days written notice. If a Party elects to terminate this Agreement for convenience, all unfilled obligations shall remain in full force. In no event will termination for convenience by TXDPS give rise to any liability whatsoever on the part of TXDPS.
- b. **For Cause:** TXDPS may immediately terminate this Agreement for cause for any violation of the terms of this Agreement or for any violation of any state or federal law or regulation relating to the subject matter of this Agreement. TXDPS shall provide the Governmental Entity with written notice to terminate this Agreement, which termination shall become effective immediately upon Governmental Entity's receipt of the notice. If this Agreement is terminated for cause, TXDPS may refuse to provide Driver Records to the Governmental Entity in any format.
- c. **Mutual Termination:** This Agreement may further be terminated by mutual agreement and consent, in writing, by both Parties.

17. Change of Status:

This Agreement shall automatically terminate if the Governmental Entity ceases to exist, substantially changes the nature of its governing business, or if it ceases to qualify for Driver Records under the permissible use(s) certified in the section herein entitled "Certification of Permissible Use(s)." The Governmental Entity shall immediately notify TXDPS in writing of any change in status that may implicate this section.

18. Amendments:

TXDPS may amend the terms and conditions of this Agreement from time to time in order to accommodate changes in the records or information furnished under this Agreement and for other reasons deemed appropriate by TXDPS. No modification or amendment to this Agreement shall become valid unless in writing and signed by both Parties. All correspondence regarding modifications or amendments to this Agreement shall be forwarded to TXDPS for prior review and written approval. Only an authorized representative or an authorized designee shall be authorized to sign changes or amendments.

19. Notice:

Any notice required or permitted under this Agreement shall be directed to the Parties at the addresses shown below. The following contact person(s) is designated by the Governmental Entity to receive all notices regarding this Agreement:

Point of Contact: Tommy Oates, Director, Security and Safety Program

Alternate Point of Contact: Catherine Camp, Director, Human Resources

Address: P. O. Box 13047

City, State, Zip Code: Austin, Texas 78711-3047

Telephone Number: Oates - (512) 463-3057; Camp - (512) 463-9996

Cell Phone Number: Oates - (512) 236 378-3376; Camp - (512) 466-5010

Fax: Risk Management - (512) 236-6170; Human Resources: (512) 236-6170

Email: Tommy.Oates@tfc.state.tx.us; Catherine.Camp@tfc.state.tx.us

All correspondence to TXDPS regarding this Agreement shall be mailed to the following address:

Texas Department of Public Safety
License and Record Service/Online Services
P.O. Box 4087
Austin, Texas 78773-0360
(512) 424-5967
Fax: (512) 424-7456
Email: e.Commerce@dps.texas.gov

Notices to the Parties at the addresses shown above shall be deemed received: (i) when delivered in hand and a receipt granted; (ii) three (3) calendar days after it is deposited in the United States mail by certified mail, return receipt requested; or (iii) when received if sent by confirmed

facsimile or confirmed email. Either of the Parties may change its address or designated individual(s) to receive notices by giving the other Party written notice as provided above, specifying the new address and/or individual and the date upon which it shall become effective.

20. No Joint Enterprise:

TXDPS is associated with the Governmental Entity only for the purposes and to the extent set forth herein. The Governmental Entity is an independent entity and shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to its duties hereunder. Nothing contained herein shall be deemed or construed to create a partnership or joint venture, to create the relationship of an employer-employee or principal-agent, or to otherwise create any liability for whatsoever with respect to the indebtedness, liabilities, and obligations of the Governmental Entity or any other party.

21. No Liability for Employees and Officers:

Each Party to this Agreement shall have no liability whatsoever for the actions or omissions of an individual employed or contracted by another Party, regardless of where the individual's action or omissions occurred. Each Party is solely responsible for the actions or omissions of its employees and agents; however, such responsibility is only to the extent required by Texas law. Where injury or property damage results from the joint or concurring acts or omissions of the Parties, liability, if any, shall be shared by each party in accordance with the applicable laws of the State of Texas, and subject to all defenses, including governmental immunity. These provisions are solely for the benefit of the Parties hereto and not for the benefit of any person or entity not a Party hereto; nor shall any provision hereof be deemed a waiver of any defenses available by law.

22. Compliance with Law:

The Parties shall comply with all local, state, and federal laws and regulations applicable to the subject matter of this Agreement, including but not limited to, the federal Driver's Privacy Protection Act of 1994 and the Texas Motor Vehicle Records Disclosure Act.

23. Interpretation Against the Drafter:

Regardless of which Party drafted this Agreement or the language at issue, any ambiguities in this Agreement or the language at issue shall not be interpreted against the drafting Party.

24. Non-Waiver:

Any failure of TXDPS, at any time, to enforce or require the strict keeping of any provision of this Agreement shall not constitute a waiver of such provision, and shall not affect or impair same or the right of TXDPS at any time to avail itself of same.

25. Headings:

The headings, captions, and arrangements used in this Agreement are for convenience only and shall not be deemed to limit, amplify, modify, or to affect the meaning of the terms of this Agreement.

26. Severability:

If one or more provisions of this Agreement or the application of any provision to any Party or circumstance is held invalid, unenforceable, or illegal in any respect by a final order/judgment of the State Office of Administrative Hearings or a court of competent jurisdiction, the remainder of this Agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

27. Audit and Inspection:

The Governmental Entity is subject to audit and inspection, at any time during normal business hours and at a mutually agreed upon location, by the State Auditor, TXDPS, and any other department or agency responsible for determining that the Parties have complied with applicable law. The Governmental Entity shall provide all reasonable facilities and assistance for the safe and convenient performance of any audit or inspection. The Governmental Entity shall keep all records and documents regarding this Agreement for the term of this Agreement and for five (5) years after the termination of this Agreement.

28. Governing Law and Jurisdiction:

This Agreement shall be construed in accordance with the laws of the State of Texas. Except as otherwise provided by Chapter 2260 of the Texas Government Code, venue for any litigation shall be Travis County, Texas.

29. Chapter 2260, Texas Government Code:

The Governmental Entity shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and the applicable TXDPS administrative rules to attempt to resolve all disputes or contract claims arising under this Agreement.

30. Survival:

Any provisions of this Agreement that impose continuing obligations on the Parties, including but not limited to the following, shall survive the expiration or termination of this Agreement for any reason: confidentiality and security obligations; notice regarding any unauthorized disclosure or breach; resell or redisclosure obligations; audit obligations; and any other provision that imposes a continuing obligation on the Governmental Entity.

31. Signature Authority:

The signatory for the Governmental Entity hereby represents and warrants that it has full and complete authority to execute this Agreement.

32. Certifications:

The Parties certify the following: (i) each Party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying Party; (ii) this Agreement is authorized by the governing body of the Parties; (iii) each Party has the authority to enter into this Contract by authority granted in Texas Transportation Code, Chapter 521 and 730; (iv) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies; (v) the

proposed arrangement serves the interest of efficient and economical administration of government; and (vi) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Texas Constitution to be supplied under contract given to the lowest responsible bidder.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date written below.

DEPARTMENT OF PUBLIC SAFETY:

GOVERNMENTAL ENTITY:



Signature



Signature

*Mimie Herklotz-Dennis, Senior
manager*

Name and Title

Kay Molina, General Counsel

Name and Title

6-12-17

Date

5/31/17

Date

**ATTACHMENT A
GOVERNMENTAL ENTITY INFORMATION FORM**

Nature of the Governmental Entity's Activities:

TFC has charge and control of all public buildings, grounds, and property; is the custodian of all state personal property; and is responsible for the proper care and protection of state property; from damage, intrusion, or improper use.

List all URL addresses/Facebook/Twitter accounts used or possessed by the Governmental Entity:

https://pwreset.tfc.state.tx.us/; https://facebook.com/TFCSocialMedia;
https://twitter.com/tfcsocialmedia/; http://www.youtube.com/user/TFC1711/videos;
http://portal.tfc.state.tx.us/; http://tfc.state.tx.us; https://twitter.com/tfctx.

Intended use of Driver Records obtained from TXDPS (Describe how the exemption qualifies for obtaining Driver Records):

TFC will use driver records to check driver status for TFC employees, contractors, interns, and volunteers who operate a motor vehicle for agency use. TFC will use driver records to ascertain driver information for providing notice to an owner of towed vehicles. TFC will use driver records to check driver status of employees, contractors, interns, and volunteers who operate a commercial motor vehicle for agency use.

If the Governmental Entity intends to release Driver Records obtained from TXDPS, explain what safeguards and/or assurances are in place to meet the requirements of this Agreement:

Not applicable

If the Governmental Entity does not intend to release Driver Records to another entity, state so below:

TFC does not intend to release driver records obtained from TxDPS.