

## TERMS AND CONDITIONS OF USE OF NCS WEBSITE

This website, [www.nationalcrimesearch.com](http://www.nationalcrimesearch.com) is owned and operated by National Crime Search, Inc. (hereafter referred to as "NCS") and this Agreement sets forth the terms and conditions which apply to the use by you ("Client") of the NCS Sites. NCS and Client may be referred to in the Agreement individually as a "Party" and collectively as the "Parties."

1. **Services.** Relying on Client's representations and promises in the Agreement, NCS agrees to provide consumer background screening reports to Client ("Reports") as set forth in the Agreement. References to "Reports" refer to the actual Report, as well as all individual information contained in the Report. Following execution of the Agreement by both Parties and Client's successful completion of NCS's customer verification requirements, Client may purchase Reports from NCS as set forth in the Agreement. NCS may periodically provide Client with documents and forms that Client may find helpful in meeting its obligations in the Agreement. Such items are provided by NCS solely as a convenience and do not constitute legal advice to Client from NCS. NCS relies entirely on the information furnished by its clients and third party information suppliers ("Suppliers") when preparing Reports. NCS shall utilize commercially reasonable efforts to ensure complete and accurate Reports; however, NCS does not guarantee the completeness or accuracy of any Report.
2. **Term.** This Agreement shall have no term. Client may discontinue obtaining Reports from NCS under this Agreement at any time, with or without cause, and with no prior notice required. NCS reserves the right to terminate or suspend Client's access and use of the site with or without notice.
3. **Client's General Responsibilities.** If Client believes it has failed to fulfill any of its obligations in the Agreement, it shall promptly notify NCS in writing. Client represents that it is an existing business with a legitimate need for Reports offered by NCS. Client shall be the end user of all Reports and shall not resell or otherwise transfer Reports to any other party unless required by law to do so. Unless NCS agrees otherwise in writing, Client shall request Reports only for one of the following permissible purposes set forth in the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA") (regardless of whether other purposes are permitted by law): insurance underwriting, employment by hire or contract, granting credit, collection of an account, establishing eligibility for licensing, in connection with a legitimate business transaction initiated by the individual who is the subject of the Report ("Consumer") or in accordance with the written instructions of the Consumer. If requested by NCS, client shall promptly supply NCS with the name and phone number of the Client contact person with whom NCS may discuss the contents of Reports furnished to Client or to verify information furnished by Client. Client is responsible for ensuring security, confidentiality and authorization of access to Reports. Accordingly, Client shall implement and maintain the following minimum security standards and practices:
  - (i) Client shall only allow its employees with a need to know such information in performance of their job duties to have access to NCS Reports, account user names, account numbers and passwords and Client shall maintain all such information with strict security and confidentiality;
  - (ii) Client shall maintain facilities and systems adequate to protect such information from unauthorized access (including physical and electronic security);
  - (iii) Client shall ensure that any devices used to order, receive or view Reports are located in a secure location of Client's business facility and that such devices are locked and turned off after normal business hours or any other time when not being used by the authorized employees referenced above;
  - (iv) Client shall change passwords periodically in accordance with then-prevailing industry standard security policies;
  - (v) Client shall promptly advise NCS in writing when any Client user name and/or password should be blocked due to an employee termination, resignation, etc., thus allowing NCS to block the user name and/or password from further use;
  - (vi) Client shall monitor the access and usage of its systems to detect any unauthorized access and usage that might compromise the confidentiality of Reports;
  - (vii) Client shall review its monthly NCS invoices as one method of detecting unauthorized usage and promptly report any suspected violations to NCS;
  - (viii) Client shall comply with the Federal Trade Commission's Disposal Rule ([www.ftc.gov/opa/2004/11/factadisposal.htm](http://www.ftc.gov/opa/2004/11/factadisposal.htm)) in order to properly dispose of Reports; and
  - (ix) If Client fails to comply with any obligation in the Agreement, NCS may immediately suspend Client's access to Reports.
4. **Client's FCRA and DPPA Responsibilities.**
  - 4.1 Prior to requesting a Report, Client shall: (i) disclose to the Consumer that a Report may be obtained and (ii) except as otherwise permitted by law, obtain the written consent of the Consumer, using a compliant authorization form, allowing Client to obtain the Report. Such written consent may not be required if the Consumer is applying for a position

over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service and who applies for the position by mail, telephone, computer or other similar means, but not in person. If this exception applies, Client shall obtain consent from such Consumer by oral, written or electronic means pursuant to the FCRA.

**4.2** Prior to requesting an Investigative Consumer Report, as defined in the FCRA, Client shall: (i) provide written notice to the Consumer that an Investigative Consumer Report has been requested; (ii) provide to the Consumer a summary of the Consumer's rights under the FCRA; and (iii) if requested, provide all required disclosures to the Consumer.

**4.3** Prior to taking potentially adverse employment action against the Consumer, based in whole or in part on the information contained in a Report furnished by NCS, Client shall provide a copy of the Report to the Consumer and a written description of the Consumer's rights under the FCRA, except as otherwise set forth in the FCRA.

**4.4** After taking any adverse action against the Consumer based on information contained in a Report furnished by NCS, Client shall: (i) provide notice of such action to the Consumer; (ii) provide the Consumer with the name, address and telephone number of NCS; (iii) inform the Consumer that he or she is entitled to a free copy of the Report and has a right to dispute information contained in the Report in accordance with the FCRA; and (iv) inform the Consumer that NCS did not make the decision to take the adverse action and that NCS is unable to provide the Consumer the specific reasons why the adverse action was taken by Client.

**4.5** If Client obtains Motor Vehicle Reports ("MVR") from NCS, Client shall comply with the Driver Privacy Protection Act, 18 U.S.C. § 2721 et seq. ("DPPA") as well as the laws and regulations of the state issuing each particular MVR. Client shall not transmit any MVR data via the Internet or e-mail if the MVR is from a state prohibiting such transmission. Client shall not obtain MVRs from NCS and then transfer the MVRs to another company, the individual driver or any other party unless required by law to do so; provided, insurance agents may transfer MVRs directly to their insurance company as required in order to facilitate the transaction for which the Report was ordered.

**4.6** As a Client of NCS we may provide you with templates for your use during the background screening process. Client acknowledges that any compliance-related templates (e.g., the disclosure and authorization notice, pre-adverse and adverse action letters) provided by NCS on our website or otherwise are intended for instructional purposes only and are not intended as legal advice. NCS recommends clients consult with an attorney to review any templates to ensure compliance with the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.) and applicable state law related to background screening and consumer disclosures and notices.

5. **Compliance with Law.** Each Party shall comply with the following, as applicable: (i) FCRA, (ii) DPPA, (iii) Gramm-Leach Bliley Act (15 U.S.C. Section 6801 *et seq.*) ("GLB") and (iv) all other present and future applicable federal, state and local laws regulating the furnishing and use of Reports. NCS does not undertake any obligation to advise Client of its legal obligations. The failure to comply with all applicable laws and regulations may result in a breach of the Agreement, termination of service, and civil and criminal liability. Client shall promptly execute and return to NCS all documentation required, now or in the future, by NCS or any government agency to permit release of information or to ensure compliance with applicable laws or regulations. Due to the five year FCRA SOL, NCS suggest a minimum of six year record retention policy for our employer-clients for any record arising out of or relating to a background check.
6. **Billing and Payment.** Client shall pay NCS for all products and services ordered even if no records are found. Client shall pay all pass-through fees, applicable taxes and charges made by information sources for release of records used in compiling Reports. Such fees, taxes and charges will be included on NCS invoices and are subject to change without prior notice. NCS will invoice Client monthly and Client shall pay all invoices within five (5) days after the invoice date (via credit card or checking account placed on file at the time of new account setup). If CLIENT is working through one of NCS's authorized resellers, then reseller may be in charge of billing and collection. Client shall pay a service charge of one and one-half percent (1 1/2%) per month (or the maximum permitted by applicable law, if lower) on all past due invoice amounts. Client shall pay NCS's reasonable attorneys' fees and costs incurred in the collection of amounts due. Client shall be liable for all charges incurred prior to the effective date of the termination or cancellation of the Agreement.
7. **Confidentiality.** Reports provided by NCS to Client are highly confidential and Client shall treat all Reports and any other documentation provided by NCS in strict confidence and shall not make such Reports and information available to any other party except as expressly provided in the Agreement or as required by law. Except as required by law or otherwise set forth in the Agreement, the terms and conditions of the Agreement and all proprietary information exchanged by the Parties and all documents referenced in the Agreement, including invoices (collectively "Confidential Information") are confidential and neither Party shall disclose Confidential Information without prior written consent of the other Party; provided, the Party to whom information is disclosed will have no obligation to preserve the proprietary nature of any Confidential Information that: (i) was previously known to such Party free of any obligation to keep it confidential; (ii) is or becomes publicly available by other than unauthorized disclosure; (iii) is developed by or on behalf of such Party independent of any information furnished pursuant to the Agreement; (iv) is received from a third party whose disclosure does not violate any confidentiality obligation or (v) is disclosed pursuant to the request of a governmental agency or court of competent jurisdiction to the extent such disclosure is required by a valid law, regulation or court order, and sufficient notice is given by the recipient to the disclosing Party of any such request to permit the disclosing Party to seek a protective order or exemption from such request.

8. **Indemnification; Limitation of Liability; Damages.** Client shall indemnify, defend and hold harmless NCS and its officers, directors, employees, representatives, agents, contractors, suppliers and resellers, from and against any and all expenses, losses, claims, judgments and liabilities of any kind arising directly or indirectly from Client's breach of the Agreement, Client's knowing violation of any applicable law or from the collection, possession, furnishing, transmittal or use of the Reports or other confidential information exchanged pursuant to the Agreement. NCS shall indemnify, defend and hold harmless Client and its officers, directors, employees, representatives, agents and contractors from and against any and all expenses, losses, claims, judgments and liabilities of any kind arising directly or indirectly from NCS's breach of the Agreement or from NCS's knowing violation of any applicable law. Client shall not assert any claim for and waives liability against NCS for any inaccurate information included in any Report unless NCS had actual knowledge of the error and failed to correct it. Because NCS has no involvement with the use of Reports provided to Client, Client shall not assert any claim against NCS for damages claimed by a third party relating to Client's use of Reports.

**SUBJECT TO THE REMAINDER OF THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. CLIENT ACKNOWLEDGES THAT ITS FAILURE TO COMPLY WITH OBLIGATIONS IN THE AGREEMENT COULD RESULT IN NCS LOSING ACCESS TO ITS SOURCES OF DATA USED TO COMPILE REPORTS AND IN SUCH CASES NCS RETAINS THE RIGHT TO SEEK ANY RESULTING DAMAGES DIRECTLY FROM CLIENT AND SUCH RIGHT IS NOT SUBJECT TO THE LIMITATION ON DAMAGES SET FORTH IN THE PRECEDING SENTENCE.**

9. **Warranties.** Reports, Website content and other information and services provided by NCS are provided "AS-IS" and NCS disclaims any warranties of any kind, either expressed or implied. NCS does not guarantee the correctness, completeness, merchantability, or fitness for a particular purpose of Reports or other information provided to Client.
10. **Use of NCS Website.** NCS may maintain a website ("Website") that Client may access to order Reports pursuant to the Agreement; provided, the availability of Reports over the Internet is subject to federal, State, and local laws as well as contractual obligations NCS has with Suppliers. Client shall not use any automatic method to avoid inactivity, disconnect or otherwise maintain a Website connection unless actually using it. Client shall not post on or transmit to the Website any defamatory, obscene or otherwise illegal content. NCS does not guarantee that the Website will be free from interruptions, errors, computer viruses or other harmful components, but NCS will use commercially reasonable efforts to maintain a safe Website. NCS may withdraw, improve or otherwise modify the Website content at any time without notice. Under no circumstances will NCS be liable for any damages related to Client's use of the Website. NCS claims a copyright interest in all Website content. National Crime Search, Inc. and NCS are trade names and/or trademarks that Client shall not use without express written permission from NCS.
11. **Ownership of Computer Programs.** The Agreement does not include the sale or license of any computer program used in NCS's provision of Reports. Such programs are not to be sold, transferred, assigned or downloaded by Client to any other person or entity.
12. **Force Majeure.** Neither Party will be liable to the other for any delay or failure in its performance of obligations in the Agreement (other than payment obligations) if and to the extent such delay or failure arises beyond the reasonable control of such Party, including, without limitation, acts of God or public enemies, labor disputes, equipment malfunctions, computer downtime, material or component shortages, supplier failures, embargoes, earthquakes, fire, flood, epidemics, rationing, acts of local, state or national governments or public agencies, utility or communication failures or delays, riots and strikes.
13. **Governing Law; Venue; Legal Costs and Fees.** The Agreement will be governed by the laws of the State of Arkansas without reference to its conflict of law principles and the Parties consent to the exclusive jurisdiction of the federal, state and local courts in Arkansas with regard to actions brought to enforce or interpret the Agreement. Venue for all such actions will be in Washington County, Arkansas. In the event of any controversy, claim, or dispute between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, the prevailing party to this Agreement shall be entitled to recover from the losing party to this Agreement reasonable expenses, attorney's fees, and costs.
14. **Assignment.** The Agreement is assignable by NCS at any time to a successor in interest. Due to NCS's verification procedures for all clients, Client shall not assign the Agreement, in whole or in part, to any party, even a successor in interest, without NCS's prior written approval. Client shall promptly notify NCS in writing of any of the following events: change in ownership of Client's business: merger: name change: or any other change in the nature of Client's business that in any way affects Client's right to request and receive Reports.

15. **Audit Rights.** Client shall comply with procedures and guidelines established by NCS and Suppliers regarding the ordering and use of Report information. NCS and Suppliers have the right to require reasonable evidence of Client's compliance with applicable laws and the Agreement and Client shall fully cooperate with such inquiries and requests. NCS and Suppliers may conduct periodic audits of Client's compliance with its obligations in the Agreement and with applicable laws. The party conducting the audit will provide reasonable advance notice and conduct the audit during regular business hours.
16. **Notice.** All notices required or permitted to be given pursuant to the Agreement must be in writing and may be delivered (i) in person, (ii) by certified mail, postage prepaid, return receipt requested, (iii) by facsimile, (iv) by electronic mail or (v) by a commercial overnight courier that guarantees next business day delivery and provides a confirmation receipt. All notices will be effective upon delivery.
17. **Entire Agreement; Amendments.** The Agreement, including all exhibits, addendums, schedules and amendments (all of which are incorporated by reference and included in the definition of "Agreement"), supersedes any and all prior negotiations and agreements, oral or written, between the Parties, and represents the entire agreement between the Parties regarding the subject matter of the Agreement. Any amendment to the Agreement must be in writing and signed by an authorized representative of each Party.
18. **Client Verification; Physical Inspection.** To assist NCS with its client verification processes, Client shall provide any information and documentation reasonably requested by NCS. Client represents that all such information and documentation will be true and complete and Client shall promptly notify NCS if the information or documentation becomes inaccurate or incomplete. Unless Client is informed otherwise by NCS, a physical inspection of Client's place of business may be required before NCS will provide Client with access to Reports. This includes a separate inspection for each Client location where Reports will be retrieved from NCS. A physical inspection is a brief on-site visit by a NCS contractor conducted to verify Client's type of business and to ensure Client's compliance with NCS's customer verification requirements. A representative from the inspection company will contact the Client representative to schedule an appointment.

## 19. Miscellaneous Provisions.

**19.1** NCS is an Equal Opportunity Employer and complies with all applicable employment laws, Executive Orders and regulations. NCS does not discriminate in its hiring and promotion practices or in the enforcement of its policies and procedures on the basis of race, color, creed, sex, age, marital status or national origin.

**19.2** The relationship of the Parties created by the Agreement is that of independent contractor and not that of employer/employee, principal/agent, partnership, joint venture or representative of the other. Neither Party shall represent to third parties that it is the employer, employee, principal, agent, joint venturer, partner or representative of the other Party.

**19.3** If a purchase order is issued for services provided pursuant to the Agreement and any term or condition of the purchase order conflicts with the Agreement, the terms and conditions of the Agreement will prevail.

**19.4** If any provision of the Agreement is determined to be void, illegal or unenforceable, it will be deemed automatically adjusted to the minimum extent necessary to conform to applicable requirements of validity, legality and enforceability and, as so adjusted, be deemed a provision of the Agreement as if it were originally included in the Agreement. In any case, the remaining provisions of the Agreement will remain in effect.

**19.5** The subject headings of the sections of the Agreement are included solely for purposes of convenience and reference and will not be deemed to explain, modify, limit, amplify or aid in the meanings, construction or interpretation of any of the provisions of the Agreement.

**19.6** No termination of the Agreement will affect the Parties' rights or obligations pursuant to other provisions of the Agreement that, by their sense and context, are intended to survive termination of the Agreement, including without limitation, use of Reports, payment obligations, disclaimer of warranties, release of claims, indemnification, confidentiality and limitation of liability.

**19.7** Each Party represents that the Agreement has been executed on such Party's behalf on the date written below by a representative authorized to bind that Party with respect to the undertakings and obligations contained in the Agreement.

**19.8** General Verification Practices: Domestic and international higher education verifications are conducted by accessing a national database containing the uploaded graduation results of participating educational institutions. For non-participating institutions, a verification consists of a minimum of three request attempts to the institution by phone, fax, and/or email with the applicant's name, DOB, Degree, and last four digits of the Social Security number being provided. The standard question format consists of: Name on school records, Date of award, Degree Title, Official name of school, and Major course (s) of study. Employment verifications consist of a researcher contacting the previous employer by means of phone, fax, and/or email with the following question format: Employment dates, Ending Title, Ending Pay, Ending Duties, Reason for leaving, and Rehire eligibility. Details of search package descriptions and pricing information are displayed on the administration page of a client's account.

**19.9** Due to the five year FCRA SOL, NCS suggests a minimum of a six year record retention policy for employer-clients for any record arising out of, or relating to, a background check provided by NCS.