

Proposed Bulk Data Access Agreement

This Agreement is entered into on _____ between the North Dakota Supreme Court, acting through the Court Administrator of the State of North Dakota [Administrator] and _____ [User] and grants User certain rights with respect to court records databases [Records] maintained by the Administrator.

I. GRANT OF LICENSE

Subject to the terms and conditions of this Agreement, the Administrator grants a non-exclusive license to the User to access the Records.

II. RIGHTS AND INTEREST

The Administrator does not grant any proprietary right to or interest in any data contained in the Records. Any rights or interest obtained by the User under this Agreement are personal to the User and may not be transferred, assigned, or sold.

III. ONGOING DATA SCRUBBING AND UPDATE REQUIREMENTS

The Administrator will update the Records periodically. The User agrees to download updated Records data within 48 hours after a new version becomes available and provide its users, subscribers, customers, or clients with the most current version.

When it updates the Records, the Administrator will provide the User with information identifying data that has been removed or otherwise restricted. The User agrees to remove from its records data that has been sealed or otherwise restricted.

The User agrees to delete any Social Security Number inadvertently included in Records data and to ensure that such Social Security Numbers are not provided to its users or subscribers.

IV. RESTRICTION ON USE OF RECORDS

A. Compliance With Authorities

The User agrees to comply with all current, or as subsequently amended federal and state laws, court rules and administrative rules and policy governing, regulating and/or relating to the dissemination of data and information, to privacy, and to the confidentiality of the data and information provided under this Agreement.

B. Commercial Solicitation Prohibition

The User agrees not to furnish, in any form, any individual name, address or other identifying data from the Records to any person or entity for the purpose of commercial solicitation of the individual.

C. Resale of Records

The User shall not reproduce or distribute or disseminate Records information in bulk but only in response to an individual record inquiry.

D. Exceptions, Revisions, or Waiver

Any exceptions, revisions, or waivers to these restrictions requested by the User must be approved in writing by the Administrator and received by the User prior to the requested use or dissemination of Records data and information.

V. DISCLOSURE REQUIREMENTS

The User agrees to provide a disclosure statement to each user, subscriber, customer, client or other third party at the time any data or information from the Records is provided. At a minimum, the User will ensure that a statement is displayed or provided every time data or information is provided which states:

The data or information provided is based on information obtained from the North Dakota district courts as of _____. The Court Administrator and the North Dakota Supreme Court:

A. Do not warrant that the information is accurate or complete except for court purposes;

B. Make no representations regarding the identity of any persons whose names appear in the records; and

C. Deny liability for any damages resulting from the release or use of the data or information. The user should verify the information by personally consulting the official record reposing at the district court.

VI. AUDITS

The Administrator may, at its discretion, perform audits of the User to verify compliance with the terms and conditions of this Agreement and the appropriate use of the data provided by the Administrator. The User agrees to cooperate with the Administrator and other authorities authorized by law in an audit that is conducted of the User. Also, the User agrees to cooperate fully with prosecutorial authorities in any action brought against the User or any of the User's subscribers relating to the reproduction, distribution, dissemination, or other use of the data and information provided by the Administrator under this Agreement. Nothing in this provision limits or abridges the User's constitutional rights against self-incrimination.

The User agrees that the Court Administrator may include "control" or "salted" data as a portion of the provided data or information as a means to ensure that any personally identifiable information is not used for commercial solicitation purposes or in an indiscriminate and reckless manner. Furthermore the User agrees to allow the Administrator to perform audits, at its discretion, to detect the unauthorized removal of control data or the warehousing of stale-dated data or information subsequently expunged, restricted or amended.

The User agrees to provide the Administrator with access at no charge to any database created using data or information from Records for the purpose of monitoring and auditing contract

compliance.

VII. DISCLAIMER OF WARRANTIES

The Administrator provides no warranties, express or implied, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose, with respect to the data or information provided under this Agreement.

The Administrator provides no warranties, express or implied, that the data or information provided is accurate, current, correct, or complete. It is expressly understood that it is the responsibility of the User and/or its subscribers, customers, clients, or other third parties to whom the information and data was supplied to verify the data or information obtained under this agreement with the official court information reposing at the district court.

VIII. LIMITATION OF LIABILITY

The User acknowledges and accepts that all data and information provided under this Agreement is provided on an “As Is” basis and that the data and information may be subject to error or omission and, therefore agree that Administrator shall not be responsible or liable in any way whatsoever for the validity of any data provided or for the use of the data and information provided.

Specifically:

The Administrator shall not be liable for any demand or claim, regardless of form of action, for any damages resulting from the use by the User of any information or data provided under this Agreement.

The Administrator shall not be liable for any demand or claim, regardless of form of action, for any damages arising from incorrect or incomplete data or information provided under this Agreement.

The Administrator shall not be liable to the User or any other party for any loss, including

revenue, profits, time, goodwill, computer time, destruction, damage or loss of data, or any other indirect, special or consequential damage which may arise from the use, operation, or modification of data provided under this Agreement.

IX. INDEMINIFICATION

The User hereby agrees to defend, indemnify, and hold harmless the North Dakota Supreme Court, the Administrator, its employees, and the State of North Dakota from all loss, risk of loss, and damages (including expenses, costs, and attorney fees) sustained or incurred because of or by reason of any claims demands, suits, actions, judgments, or executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of, or relating in any manner to any use made of the data or information obtained under this Agreement.

X. INSURANCE

The User shall, at its own expense, maintain, for the duration of this Agreement, liability insurance sufficient to fulfill its responsibilities under Section IX above. Such insurance must have limits of not less than one million dollars each occurrence and two million dollars general aggregate. The insurance shall cover liability arising out of any use made by the User of the data or information obtained under this Agreement and shall contain separation of insured's (cross liability) provisions. The State of North Dakota, the North Dakota Supreme Court, the Administrator, its elected and appointed officials, agents, and employees shall be named as additional insureds on said policy.

The User shall furnish evidence in the form of a Certificate of Insurance satisfactory to the Administrator that insurance has been secured. Failure to provide proof of insurance as required or the lapsing or cancellation of such insurance coverage will result in termination of the Agreement.

XI. SUBSCRIBER PROVISIONS

A. Subscriber Compliance

The User shall at all times be obligated to ensure its users, subscribers, customers, or clients comply with all provisions of the law regarding the use of information provided to the User under this contract.

B. Subscriber Agreement

The User shall enter into a written subscriber agreement with each of its users, subscribers, customers, or clients. Electronic “Click Through Agreements” that conform with contract mutual assent standards are considered written agreements for the purposes of this Agreement. Such agreements shall specifically detail the access that the users, subscribers, customers, or clients will have, detail authorized uses of the data accessed, condition access to authorized lawful use, and include a provision for immediate termination of the agreement in the event of improper use of the data or information.

C. Subscriber Certification

The User shall obtain a certification from the user, subscriber, customer, or client stating that the person will use the information only for those purposes allowed by law and under the subscriber agreement.

D. Retention of Subscriber Information

The User agrees to maintain a record of the subscriber agreements and subscriber certification for a period of not less than six years from the latest date the User disclosed information to the subscriber and shall provide such record to the Administrator upon request.

XII. ASSIGNMENT

The User may not, without the express written permission of the Administrator, transfer or assign:

- A. this Agreement or any portion thereof;
- B. any right or benefit accruing to the User under this Agreement; or
- C. any claim arising under this Agreement.

XIII. TERMINATION

A. General

This Agreement may be terminated without cause by either the Administrator or the User upon thirty (30) days written notice.

B. Termination for Cause

The User accepts full responsibility and liability for any violations of this Agreement by the User or any officer, employee or agent of the User and any such violation shall result in immediate termination by the Administrator of all data and information provided to User or any officer, employee or agent of the User in any form and immediate forfeiture to the Administrator of any court provided data and information, in any form, held by the User or any officer, employee or agent of the User. In such event, the User shall be liable for damages as authorized by law.

C. Termination for Nonpayment

The Administrator may immediately, without notice, terminate this Agreement for failure of the User to pay an invoice outstanding longer than 30 days.

D. Termination in Event of Assignment

The Administrator in its sole discretion may terminate this Agreement without notice if the User transfers or assigns, without the express written permission of the Administrator: (i) this Agreement or any portion; (ii) any right or benefit accruing to the User under this Agreement; nor (iii) any claim arising under this Agreement.

E. Termination procedure:

Upon termination of this Agreement, the User agrees to stop disseminating any data or information provided under this Agreement and destroy all data and information provided under this agreement.