

## **Industry Service Provider Agreement – Pre-Employment Screening Program (PSP)**

A provider of industry screening services must be a registered account holder in order to obtain access to records through the Pre-Employment Screening Program ('PSP'). Industry service providers include a range of companies conducting pre-employment screening functions as defined in Terms and Conditions Section 1(a).

The information gathered here will be used (a) to register your organization, and the specified users within it, for this account, (b) to run verification checks regarding the identity of your company and the individuals you identify as users on your behalf, and (c) for billing and account management purposes.

To register, read all the information in this Agreement carefully, complete the information required for this Agreement along with any other required forms detailed in Section Two below, specify a user to be the signer/administrator, and submit the application.

Documents may be scanned and returned via email to [PSPenrollment@egov.com](mailto:PSPenrollment@egov.com) or returned via courier to

NIC Technologies  
4601 N Fairfax Drive, Suite 1160  
Arlington, VA 22203

Please allow up to ten business days for your enrollment documents to be processed. An email with activation instructions will be sent to the primary account contact at the email address identified in Section Two. Once activation is complete, each user will receive an email containing their user name and a temporary password. Each user will be required to change the temporary password when the user first visits the PSP web site.

The PSP Industry Service Provider annual subscription fee is \$100.00. Neither the annual subscription fee, nor any other charge, will be applied to your account until such time as the company's account has been activated and you have received your access credentials.

You may pay by direct debit from a checking account by filling out the information in Section Two. (Alternate payment arrangements may be considered. Please contact 877-642-9499.) Thereafter, the annual renewal is \$100.00 and is billed to your monthly account automatically on the anniversary of your account activation month.

If you have any questions regarding information contained within this Agreement, please contact NIC Technologies, LLC at 877-642-9499.

## Section 1

- 1) **Complete this Industry Service Provider Agreement.** Don't forget to list your users in Section 2.
- 2) **NICT will send account activation instructions to the primary account contact email address listed. The primary account contact will be designated as the signer/administrator of the account. You may change the administrator after sign up is completed. BY SUBMITTING THIS AGREEMENT, YOU INDICATE THE ASSENT OF THE ORGANIZATION IDENTIFIED IN SECTION TWO (the "Industry Service Provider") TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF THE PROSPECTIVE INDUSTRY SERVICE PROVIDER DOES NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT SUBMIT IT.**
- 3) **Upon receipt of the completed Agreement** and accurate completion of the verification process, NICT will **send usernames and passwords via email** for the other users listed in the Agreement, to the email addresses you have listed for each of them.

**CUSTOMER SIGNATURE – Your submission of this application constitutes your signature to the Agreement on behalf of the Industry Service Provider, and that you express agreement with the items listed on the right hand side.→**

**Signature:** \_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**By my submission of this application on behalf of the Industry Service Provider (which constitutes the delivery of my signature on it) I agree that:**

1. I have read and, on behalf of the Industry Service Provider, agree to the terms and conditions of NICT's Industry Service Provider Agreement as presented.
2. I represent that I have authority to bind the Industry Service Provider, on whose behalf I am signing, to this Agreement.
3. I have read and understand, and the Industry Service Provider agrees to be bound by and comply with, the Limitations on Use of Information and the Fair Credit Reporting Act requirements listed under Section 3, #3 below.
4. The Industry Service Provider will obtain and preserve the written consent of each Applicant prior to accessing the Applicant's information on the PSP service, using the exact FMCSA-required consent language provided as part of this Agreement.

## Section 2: Industry Service Provider Information

**Physical Address** Organization Name: \_\_\_\_\_ (“Industry Service Provider”)  
Primary Contact: \_\_\_\_\_ Title: \_\_\_\_\_  
Email Address for Primary Contact: \_\_\_\_\_  
Address 1: \_\_\_\_\_  
Address 2: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax: \_\_\_\_\_  
# of Motor Carrier Customers \_\_\_\_\_ (approximately)  
# of Drivers Screened Annually \_\_\_\_\_ (approximately)

**Billing Address** Organization Name: \_\_\_\_\_ Attention: \_\_\_\_\_  
Email Address for Billing (to receive monthly invoice notification): \_\_\_\_\_  
Address 1: \_\_\_\_\_  
Address 2: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Ext. \_\_\_\_\_ Fax: \_\_\_\_\_

### 1. Billing

*All usage fees incurred will be totaled and billed monthly. You may view your account information online at any time. Payment will be made by electronic check (ACH debit). Alternate payment arrangements will be considered. Please contact 877-642-9499.*

Bank Name: \_\_\_\_\_

Routing #: \_\_\_\_\_

Bank Account Type: \_\_\_\_\_

Bank Account #: \_\_\_\_\_

NOTE: NICT does not currently accept ACH payments specifically funded by a foreign source (bank or company), known as an International ACH Transaction (“IAT”).

As defined by The Electronic Payments Association, formerly the National Automated Clearing House Association, an IAT means a credit or debit entry that is part of a payment transaction involving a financial agency office that is not located in the territorial jurisdiction of the United States. For purposes of this definition a “financial agency” means an entity that is authorized by applicable law to accept deposits or is in

the business of issuing money orders or transferring funds. An office of a financial agency is involved in the payment transaction if it:

- (1) Holds an account that is credited or debited as part of the payment transaction;
- (2) Receives payment directly from a person or makes payment directly to a person as part of the payment transaction; or
- (3) Serves as an intermediary in the settlement of any part of the payment transaction.

If your company's bank account is not located at an institution's office that is within the territorial jurisdiction of the United States of America, or if your financial institution is not based within the territorial jurisdiction of the United States of America, please contact NICT at 877-642-9499 to discuss payment options.

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**IDENTIFICATION OF SERVICES DESIRED:**

**Department of Transportation – Pre-Employment Screening Program ('PSP') consisting of (a) commercial motor vehicle FMCSA-reportable crash reports, if any; (b) inspection reports without driver-related safety violations, if any; (c) inspection reports with serious driver-related safety violations, if any; or (d) a "null" report, indicating no record for the driver information searched.** NICT is the exclusive agent for online access to Federal Motor Carrier Safety Administration Pre-Employment Screening Program records. Authorized users pay the annual subscription fee to maintain the monthly billing option, and a \$10.00 fee for each search run, whether or not crash or inspection information is available for the driver.

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**User name(s) to be assigned to account:** (10 users per account. If you require more users, you may purchase additional accounts, and receive 10 additional users per account. All accounts must have the same signer/administrator.)

	User Name (First and Last)	User Email Address (must be unique)
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____

## Section 3: Terms and Conditions

Industry Service Provider and NIC Technologies, LLC, (“NICT”) wish to contract for the provision of electronic services from NICT to Industry Service Provider as per the Terms and Conditions below. NICT provides online access, from internet-enabled devices, to government databases and information with related services, specifically including the PSP system. Industry Service Provider wishes to use these services made available by NICT.

### Terms and Conditions

#### 1. Definitions

(a) ‘Industry Service Provider’ means:

- Companies who offer direct screening for-hire and then leasing of drivers to service motor carriers in the industry;
- Companies who offer outsourced screening and hiring on behalf of motor carriers in the industry;
- Companies who offer provision of pre-employment screening information to support motor carrier direct hiring of drivers;
- Companies who offer provision of records to commercial drivers who seek integrated pre-employment screening information about themselves.

(b) ‘Applicant’ means any individual, other than an employer, who is seeking employment with an employer and who in the course of his or her employment directly affects commercial vehicle motor safety. Such term includes a driver of a commercial vehicle including an independent contractor while in the course of operating a commercial motor vehicle.

(c) ‘Employee’ means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial vehicle motor safety. Such term includes a driver of a commercial vehicle including an independent contractor while in the course of operating a commercial motor vehicle.

#### 2. What Constitutes The Agreement

(a) This Agreement sets forth the terms and conditions under which NICT will provide services to Industry Service Provider.

(b) Industry Service Provider, through its authorized representative, acknowledges that its authorized representative has read this Agreement and agrees on behalf of the entity that it is the complete and exclusive statement of the agreement between the parties, superseding all other communications, oral or written. This Agreement consists of this multi-page form, additional forms required by NICT to obtain its services, certain Fair Credit Reporting Act materials, and other notices from NICT that say “This Is A Part Of The Agreement Between The Parties” which may be provided from time to time to Industry Service Provider unilaterally by NICT. **This Agreement may be modified only by written amendment signed by the parties, except as otherwise provided for in this paragraph.** In the event Industry Service Provider issues a

purchase order or other instrument covering the services herein specified, it is understood and agreed that it is for Industry Service Provider's internal purposes only and shall in no way modify, add to, or delete any of the terms and conditions in this Agreement.

(c) **INDUSTRY SERVICE PROVIDER IS RESPONSIBLE AND LIABLE FOR EACH AND EVERY ACTION TAKEN ON THE PSP SERVICE UNDER ANY USERNAME AND PASSWORD ASSOCIATED WITH IT, WHETHER OR NOT SUCH USE WAS AUTHORIZED BY INDUSTRY SERVICE PROVIDER.** Each authorized holder of a username and password associated with Industry Service Provider is also responsible for any actions taken on the PSP service by anyone using that username and password, whether or not authorized by the authorized user. Industry Service Provider's account administrator may deactivate any username and password by using the account administration function, or by calling NICT at 877-642-9499.

3. Reservation Of Right To Cancel or Withdraw Service. NICT reserves the right to withdraw any service without consulting Industry Service Provider prior to withdrawing such service and shall have no liability whatsoever to Industry Service Provider in connection with deletion or elimination of any such service.

4. Compliance With Laws and Limitation On Use Of Information. Industry Service Provider agrees and understands that:

(a) *Limitation On Use Of Information.* Pursuant to federal statute, the information obtained from the PSP database **may only be used for pre-employment screening of Applicants, and only by the Industry Service Provider and/or the potential employer of the Applicant directly involved in the hiring process of an Applicant (Industry Service Provider customer) and/or the Applicant.** Industry Service Provider further agrees not to share an Applicant's safety performance information in any way with anyone other than: (i) the Applicant; or (ii) the Industry Service Provider customer directly involved in the hiring process, provided that such Industry Service Provider customer is contractually obligated not to share the Applicant's information with anyone other than the Applicant and to comply with the other terms and conditions applicable to the Industry Service Provider pursuant to Section 4 of these Terms and Conditions. This includes not sharing the Applicant's safety performance with Industry Service Provider employees not involved in the hiring process, and any other company or individual outside your company other than the Applicant. Except as set forth in Section 2(c), below, or as otherwise required by applicable law, Industry Service Provider shall use each PSP record only once, for one purpose, and shall thereafter not supply the PSP record to more than one Industry Service Provider customer, nor supply a PSP record more than one time to any Industry Service Provider customer. Industry Service Provider shall not create or update any file with PSP information provided to develop an internal data storage mechanism, nor store, combine and/or link the information with any other information for any reason.

Industry Service Provider shall not, and shall require its Industry Service Provider customers to not, use any person's information obtained under this Agreement for direct mail or email solicitations, advertising, or surveys, nor shall it compile or publish, or permit others to compile or publish, including on the Internet, any portions of the personal information furnished to it in a PSP record.

(b) *Compliance With Laws Generally.* Under no circumstances may Industry Service Provider, or any other party acting by or through Industry Service Provider or using Industry Service Provider's ID/account numbers, use data received from or through NICT, including PSP information, in any way except in full and complete compliance with all applicable laws.

Industry Service Provider further agrees to comply with all applicable federal and state laws with respect to each Applicant and the information available in the PSP database.

(c) *Agreements with Industry Service Provider customer:* Industry Service Provider shall require Industry Service Provider customers that are receiving PSP records to complete and deliver a written agreement to Industry Service Provider wherein the Industry Service Provider customer agrees at a minimum to:

- (i) Abide by all state and federal legal restrictions and conditions upon use and disclosure of the personal information contained within a PSP record;
- (ii) Keep sufficient books and records to evidence use in accordance with applicable federal laws;
- (iii) Abide by the terms and conditions of this Agreement;
- (iv) Be the agent of Industry Service Provider for purposes of obtaining the necessary Applicant consent in accordance with this agreement and holding the necessary Applicant consent forms in escrow for Industry Service Provider, if applicable; and
- (v) Promptly transfer the necessary Applicant consent to Industry Service Provider upon request from Industry Service Provider, if applicable.

(d) *Fair Credit Reporting Act (FCRA).* Industry Service Provider agrees that it will:

1). **PROVIDE** TO NICT, prior to initially accessing any records from PSP, and as required periodically by NICT thereafter, a form certifying certain informational statements and promises under the FCRA and, if applicable, the Driver Privacy Protection Act (“DPPA”), regarding use of the PSP information and certain notices to be given to Applicants by the Industry Service Provider. The certification form is included as a part of this Agreement (“*Industry Service Provider FCRA Employer Certification*”).

2). **OBTAIN** the Applicant’s consent, in advance of making a request for information to PSP, using the FMCSA-required consent language included as part of this Agreement (“*Important Notice Regarding Background Reports from the PSP Online Service*”). The consent language must be used in whole, exactly as provided, by Industry Service Provider to obtain the consent of each Applicant for which it accesses the PSP database.

3). **INFORM** each Applicant in writing if information about the Applicant from the PSP database has been used in the hiring screening process.

4). **PROVIDE** each Applicant a complete and full copy of the information on the Applicant that was obtained from the PSP database if required under the FCRA.

5). **INFORM** each Applicant that he or she has a right to dispute the completeness or accuracy of any information obtained from the PSP database by visiting <https://dataqs.fmcsa.dot.gov>. **ONLY FMCSA-DOT, AND NOT NICT, IS AUTHORIZED TO RECEIVE DISPUTES CONCERNING THE COMPLETENESS OR ACCURACY OF PSP DATABASE INFORMATION, CONDUCT AN INVESTIGATION WITH RESPECT TO THE DISPUTED INFORMATION, REVIEW ALL RELEVANT INFORMATION, AND TAKE ANY OTHER ACTION WITH RESPECT TO THE DISPUTE. NICT IS A CONDUIT BETWEEN FMCSA AND THE INFORMATION SERVICE PROVIDER, AND PERFORMS ONLY MECHANICAL ACTS IN CONNECTION WITH TRANSMITTING THE INFORMATION CONTAINED IN THE PSP DATABASE. NICT HAS NO AUTHORITY, AND NO RESPONSIBILITY, TO REVIEW ANY DISPUTE-RELATED INFORMATION OR**

CONDUCT AN INVESTIGATION WITH RESPECT TO THE DISPUTED INFORMATION. NICT HAS NO AUTHORITY, AND NO RESPONSIBILITY, TO DETERMINE WHETHER ANY ITEM OF INFORMATION DISPUTED BY A CONSUMER IS ACCURATE OR COMPLETE OR CANNOT BE VERIFIED. NICT HAS NO AUTHORITY, AND NO RESPONSIBILITY, TO MODIFY, DELETE, OR PERMANENTLY BLOCK THE REPORTING OF, ANY ITEM OF INFORMATION CONTAINED IN THE PSP DATABASE. NICT HAS NO AUTHORITY, AND NO RESPONSIBILITY, TO REPORT THE RESULTS OF ANY DISPUTE INVESTIGATION TO ANY CONSUMER REPORTING AGENCY THAT RECEIVED THE INFORMATION. NICT ALSO DOES NOT CONTROL THE TIME FRAME WITHIN WHICH FMCSA CONDUCTS ANY DISPUTE INVESTIGATION. ANY DISPUTE CONCERNING THE COMPLETENESS OR ACCURACY OF PSP DATABASE INFORMATION SHOULD BE RAISED DIRECTLY WITH FMCSA BY CONTACTING THE OFFICE OF FINANCIAL MANAGEMENT, DEPARTMENT OF TRANSPORTATION, WASHINGTON, DC 20590 (202) 366-1306.

6). **INFORM** each Applicant that he or she may obtain more information about the FCRA, including information on rights under his or her state's law which may be greater than under the FCRA, at [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) and that the Applicant may report violations to the Office of Financial Management, Department of Transportation, Washington, DC 20590 (202) 366-1306.

- (e) *Governing Laws.* This Agreement shall be governed by and construed according to the laws of the State of Kansas as such laws are applied to contracts made and to be performed entirely in Kansas without regard to conflict of law principles. All actions not subject to arbitration hereunder shall be brought in whole or in part in the District Court of Johnson County, Kansas or the U.S. District Court of Kansas, and each party submits and consents to the jurisdiction of those courts and waives any and all objections to jurisdiction or venue that it may have thereto.

## 5. **Conditions of Use.**

- (a) *Consent Of Applicant.* Industry Service Provider and/or Industry Service Provider customer agrees it will obtain the consent, in advance, of each Applicant for which it accesses the PSP database, prior to accessing the database for the Applicant's information, and that Industry Service Provider and/or Industry Service Provider customer will retain and preserve such consent in its files and records for purposes of audit. **Industry Service Provider agrees it will use the FMCSA-required consent language, or require Industry Service Provider customer to use the FMCSA-required consent language, included as part of this Agreement ("Important Notice Regarding Background Reports from the PSP Online Service") in whole, exactly as provided, to obtain Applicant consent. The consent language may be included with other consent forms or language at the discretion of Industry Service Provider, provided that paragraphs 1-4 are intact and the language is unchanged.**
- (b) *Hours of Service:* Service will generally be provided on a non-guaranteed basis seven (7) days per week, twenty-four (24) hours per day, excluding scheduled maintenance as designated from time to time by NICT at its sole discretion, and necessary unscheduled maintenance or Force Majeure events.
- (c) *ID/Account Numbers:* NICT will issue to the Industry Service Provider a maximum of ten (10) ID/account numbers per annual fee. Industry Service Provider is responsible for preserving the secrecy of its account numbers and for ensuring that access to services and use of any 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. **Industry Service Provider is liable for any and all charges for services to any of its ID/account numbers whether or not authorized by Industry Service Provider.** Industry Service Provider's account administrator may deactivate any username and password for any ID associated with its account number by using the account administration function or by calling NICT at 877-642-9499.

- (d) ***Information Security:*** Industry Service Provider shall report to NICT, and shall require that Industry Service Provider customer report to Industry Service Provider who shall then report to NICT, the following occurrences promptly upon the discovery of:
1. Any known misuse of and/or breach of security or confidentiality involving a PSP record furnished to Industry Service Provider from NICT, or from Industry Service Provider to an Industry Service Provider customer;
  2. Any litigation or Notice of Claim involving the content or handling of a PSP record furnished to Industry Service Provider or from Industry Service Provider to an Industry Service Provider customer. Such an occurrence shall be reported by Industry Service Provider customers to Industry Service Provider and by Industry Service Provider to NICT within three (3) business days of service of process.
  3. Any non-monetary breach of the Industry Service Provider's written agreement with an Industry Service Provider customer. Such an occurrence shall be reported by Industry Service Provider customers to Industry Service Provider and by Industry Service Provider to NICT within five (5) business days of discovering such breach.
- (e) ***Unauthorized Disclosure:*** Industry Service Provider agrees to implement reasonable system and data security procedures to protect PSP records from unauthorized disclosure. For Industry Service Providers, such reasonable procedures must include and for Industry Service Provider customers such reasonable procedures may include, but are not limited to, username and password access policies, data retention and destruction, firewalls, background investigations of employees or any other individuals authorized to access PSP records, encryption during transmission, and execution of confidentiality agreements by such employees or other individuals with authorized access.
- (f) ***Copyright and Ownership of Information:*** Industry Service Provider agrees to comply with any copyright notices and other limitations on use applicable to services, databases, or other information provided by NICT. All commercial driver information furnished by PSP is the property of the Federal Motor Carrier Safety Administration, Department of Transportation, of the United States of America. All software applications, code, documentation, forms, trademarks, service marks, copyrights, and other materials required to use PSP are the property of NICT and its affiliates and licensors unless otherwise expressly identified.
- (g) ***Data Retention.*** Unless the requirement exists for a longer retention period, Industry Service Provider agrees to maintain the safety performance information and all other PSP or FCRA related employment transaction records on any Applicant for three years from the date a hiring decision was made, after which the Industry Service Provider agrees to physically destroy the safety performance information on the Applicant in a manner that makes the safety performance information unreadable, unusable and unrecoverable.
- (h) ***Notice.*** The PSP system is maintained and operated under the jurisdiction of the Secretary of the U.S. Department of Transportation, a part of the executive branch of the government of the United States of America. The PSP system contains information that is protected by federal law, including but not limited to the Privacy Act of 1974. A federal

**statute, 18 U.S.C. section 1001, imposes sanctions on persons who knowingly or willfully make a materially false or fictitious statement, or any other type of misrepresentation, in connection with a matter handled by the executive branch. Violations of 18 U.S.C. section 1001 may result in sanctions against the person(s) committing the violation, which may include fines or imprisonment. Accessing the PSP system for any purpose other than pre-employment screening, and without having first obtained the consent of the Applicant, may well be such a violation.**

6. Payment.

- (a) *Invoices.* Invoices for all services rendered will be prepared by NICT and provided electronically by NICT. Rates will be in accordance with the current NICT rate schedule. Invoices will be paid by automatic direct debit approximately five calendar days after the invoice is made available to Industry Service Provider. Alternate payment arrangements may be considered. Please call 877-642-9499.
- (b) *Taxes.* In addition to the rates contained herein, Industry Service Provider shall pay NICT for sales, use, and excise taxes incurred by NICT, if any, in providing services to Industry Service Provider.
- (c) *Delinquency Charges.* Past due invoices will be subject to a delinquency charge of 1.5% of the amount in arrears per month, or the legal limit, whichever is less. Industry Service Provider agrees to pay all costs of collection of delinquent accounts, including reasonable attorney's fees, as permitted by law.
- (d) *Default:* An account is in default if it is past due or if Industry Service Provider declares bankruptcy or is insolvent. In the event of default, NICT may, at its sole option, block the Industry Service Provider from use of the account either temporarily, until the past due amount is paid, or permanently, regardless of payment. Not exercising this option at any particular time does not constitute a waiver nor prevent NICT from exercising this option at any other time. NICT may, at its discretion, require that additional steps be taken to secure the likelihood of payment by Industry Service Provider.

7. Limitation of Liability.

- (a) The remedies set forth in this Agreement are exclusive and in no event shall NICT, its affiliates, 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 shall in any event be limited to the charges paid for the previous month by Industry Service Provider for the services in connection with which a claim of liability is asserted or imposed. Industry Service Provider 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.
- (b) Industry Service Provider agrees that NICT will not be liable for any claim or demand of any nature or kind whether asserted against NICT or against Industry Service Provider by any third party, arising out of the services or materials provided or their use. There are no third party beneficiaries of this Agreement except as expressly set forth herein. Industry Service Provider agrees to indemnify and hold NICT harmless from claims of third parties arising out of the Industry Service Provider's use of the services or materials provided pursuant to this Agreement.

- (c) NICT shall not 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 circumstances beyond its reasonable control, including problems with or delays caused by its database or other providers.
- (d) No action or suit, regardless of form, other than an action for payments due NICT, 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) NICT, federal, state, county and local government agencies and universities, professional associations and all other parties who may from time to time provide information for access through the PSP service or NICT's other online services, if any, shall at no time be liable for any errors in or omissions from information available in the PSP database.
- (f) NICT does not alter, supplement, or modify the information contained in the PSP database owned by the Federal Motor Carrier Safety Administration, Department of Transportation (FMCSA-DOT), and therefore is not a data provider but acts as an authorized "gatekeeper" and "conduit" to the FMCSA-DOT information. The PSP **database** refers to the information maintained by the FMCSA-DOT. The PSP (sometimes with the word **service or system** at the end) refers to the system operated by NICT through which the database information is accessed electronically.
- (g) Industry Service Provider agrees that neither it nor NICT are representatives of FMCSA-DOT for purposes of PSP records data interpretation and therefore, are not authorized by FMCSA-DOT to interpret the content of records.

8. **Warranty.** NICT MAKES NO WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF AVAILABILITY, ACCURACY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY. Industry Service Provider acknowledges and agrees that the services provided by NICT are merely access and reporting services that are dependent upon the accuracy, completeness and integrity of government maintained databases and information. NICT cannot and does not guarantee that the services will be uninterrupted or error free, or that the information provided will be accurate, complete or up to date. Accordingly, Industry Service Provider agrees that it uses the services at its own risk.

9. **Rate Changes.** Rates are as set forth in Section 2 of this Agreement and are established by NICT at its sole discretion. Rates may change at any time.

10. **Notice.** All notices, consents and other communications to NICT under this Agreement shall be made in writing, shall be deemed given (a) when received, if delivered personally by hand (with written confirmation of receipt), (b) on the same business day when sent by facsimile during regular business hours at the place of delivery or on the next business day after transmission if sent by facsimile after regular business hours at the place of delivery, in each case with written confirmation of transmission, (c) one (1) business day after the day sent by overnight courier (with written confirmation of receipt), in each case at the following address and facsimile number (or to such other address or facsimile number as NICT may have specified by notice given to Industry Service Provider pursuant to this provision):

President (LEGAL NOTICE)  
 NIC Technologies, LLC  
 4601 N Fairfax Drive, Suite 1160  
 Arlington, VA 22203

With a copy to:

General Counsel, NIC Inc. (LEGAL NOTICE)  
25501 West Valley Parkway  
Suite 300  
Olathe, Kansas 66061

All notices, consents and other communications to Industry Service Provider under this Agreement may be given in the same manner as notices to NICT as set forth above. Such notices shall be deemed given at the times specified above for notices to NICT, provided that such notices are sent to the addresses set forth in Section 2 under the heading of "Billing Address" (or to such other address, facsimile number or email as Industry Service Provider may have specified by notice given to NICT pursuant to this provision). Notice may also be sent to Industry Service Provider via email to the email address specified in Section 2 above under the heading of "Physical Address", in which case such notice will be deemed given on the same business day when sent if sent during regular business hours at the place of delivery or on the next business day after transmission if sent by email after regular business hours at the place of delivery.

11. Trade name/Trademark/Copyright. Industry Service Provider agrees that it will not use the trademark "NICT" or "NIC Technologies, LLC" or "or any of NICT's service marks, including 'PSP'," identified in any fashion unless specifically authorized to do so in writing by NICT. Industry Service Provider agrees not to tamper with, alter, or change in any fashion any databases or software code, applications or programs made available to Industry Service Provider by NICT.
12. General.
  - (a) *Waiver:* The waiver, modification, or failure to insist by NICT on any of these terms or conditions, shall not void, waive, or modify any of the other terms or conditions nor be construed as a waiver or relinquishment of NICT's right to performance of any such term or terms.
  - (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) *Assignment:* This Agreement is not assignable or transferable by Industry Service Provider and any attempted assignment or transfer shall be null and void and of no force or effect. NICT may assign this Agreement and/or the payments due to NICT without notice to or requirement for Industry Service Provider's permission or approval.
  - (d) *Termination:* Industry Service Provider may terminate the PSP account at any time by providing written notice to NICT via email, fax or courier. Industry Service Provider will be responsible for payment of any outstanding charges on the PSP account. NICT will retain the annual subscription payment.
  - (e) *Audit Of Use:* **Industry Service Provider agrees to keep accurate records regarding its use of the PSP service, including preserving Applicant advance consent forms and notices given to Applicants, and regarding the use to which the database information has been put. Industry Service Provider's retention of the Applicant's signed and completed FMCSA-required consent form serves as evidence that the Applicant approved your access to the PSP system. Failure to maintain the Applicant's signed and completed consent form may result in a conclusion that your company did not obtain the Applicant's signed consent prior to accessing the PSP system, and may result in administrative, civil, or criminal sanctions**

*against your company and any persons involved in the PSP access and Applicant consent processes. Industry Service Provider agrees and consents that its use of such records is subject to audit whether by email, on-site, or otherwise, by NICT, FMCSA-DOT, or the designated representative(s) of either of them, at any reasonable time. Industry Service Provider agrees that it will cooperate with any such audit and will make its records available to the auditors as required; further it understands and agrees that any violations of the conditions of use or requirements for access to the PSP database information may result in sanctions against Industry Service Provider, or referral for civil or criminal prosecution.* Such action may range from suspension for a fixed period of time, of Industry Service Provider from using a service, or the requirement that Industry Service Provider suspend an Industry Service Provider customer from receiving PSP records, to termination of the privilege of receiving access to a service, or in the case of an Industry Service Provider customer, from receiving PSP records, and may include liability of Industry Service Provider or Industry Service Provider customer to NICT and/ or the U.S. DOT, **or referral for civil or criminal prosecution.**

- (f) *General Audit Procedure:* In the event your company is selected for audit, you will receive a notice of audit and directions for audit completion via email to the Industry Service Provider primary account contact and/or account users, and/or notification via mail or courier. You will be required to furnish copies of all requested FMCSA-required Applicant signed consent forms within a specified number of days which will be set forth in the notice of audit. **Failure to respond with copies of the requested consent forms meeting the standards established in this Agreement by the stated deadline may result in the conclusion that your company did not obtain the Applicants' signed consents in advance of accessing the PSP system, and may result in sanctions against the company and the persons involved. See section 4(f) of this Agreement. You may also be contacted by telephone, email, or site visit, and be required to answer questions regarding your company's accessing and use of PSP information.**
- (g) *Arbitration:* The parties hereto agree that any dispute, controversy or claim arising out of or relating to the interpretation of this Agreement or the performance or breach thereof shall be submitted to and settled by binding arbitration in Johnson County, Kansas, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, with one arbitrator selected by the AAA, which arbitrator shall have experience in the trucking industry and with employment matters in general. The arbitration award determined by the arbitrator shall be final and judgment upon the award of the arbitrator may be entered by any court having competent jurisdiction. The only circumstances in which disputes between the parties will not be subject to the requirement to arbitrate is where a party makes a good faith determination that a breach of the terms of the Agreement is such that damage resulting from the breach will be so immediate, irreparable, severe, or otherwise incapable of adequate redress that a temporary restraining order, preliminary injunction, or other immediate injunctive relief is the only adequate remedy for such breach.

End.

## INDUSTRY SERVICE PROVIDER FCRA CERTIFICATION

Re: *Fair Credit Reporting Act*

### *Consumer Report Certification Requirements*

To Industry Service Provider:

Pursuant to the federal Fair Credit Reporting Act (the "FCRA") the undersigned, on behalf of the commercial driver employer I represent (the "Employer"), hereby certifies the following regarding each of the Pre-Employment Screening program records (the "Records") that Employer is requesting:

1. The requested Records will be used for pre-employment screening purposes only;
2. Prior to this request, Employer provided each Applicant a clear, separate and conspicuous written disclosure that the Employer is permitted to obtain the Records for employment purposes;
3. Each Applicant has provided the Employer with written authorization permitting Employer to obtain a copy of the Applicant's Records with PSP;
4. If an Applicant applies in person: Prior to taking any adverse action as to the Applicant's application for employment, if such action would be based upon information which came, or partly came, from Records received from PSP, Employer will provide the Applicant with: (1) a copy of the Records; and (2) a written description of his/her rights under the FCRA prepared by the Consumer Financial Protection Bureau.
5. If an Applicant applies by mail, telephone, computer, or other similar means: If Employer elects to take an adverse action as to the Applicant's application for employment (for instance, deciding not to hire) based upon information which came, or partly came, from Records received from PSP, Employer may, instead of the notice required in paragraph 4, move forward with taking such adverse action if Employer, within three (3) business days of taking such action, notifies the Applicant:
  - a. That the adverse action has been taken based upon information which came, or partly came, from Records received from PSP;
  - b. Of the name, address, and telephone number of the U.S. Federal Motor Carrier Safety Administration, of the Department of Transportation, ("FMCSA-DOT") (which maintains the PSP database), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, (800) 832-5660, TTY (800) 877-8339;
  - c. That FMCSA-DOT did not, and NICT (which operates the PSP service) did not, make the decision to take the adverse action and is unable to provide to the Applicant the specific reasons why the adverse action was taken;
  - d. That Applicant may, if proper identification is provided, request from the Employer a free copy of Applicant's Records with PSP; and
  - e. That Applicant has a right to dispute incomplete or inaccurate information in the Records by visiting <https://dataqs.fmcsa.dot.gov> and that ONLY FMCSA-DOT, and NOT NICT, is authorized to receive disputes concerning the accuracy or completeness of PSP database information, conduct an investigation with respect to the disputed information, review all relevant information, and take any

other action with respect to the dispute, including modifying, deleting, or permanently blocking the reporting of any item of information contained in the PSP database, and reporting the results of any dispute investigation to any consumer reporting agency that received the information.

If a request is made by the Applicant to the Employer for Applicant's Records with PSP, and proper identification is provided, Employer agrees to provide Applicant with a free copy of Applicant's Records with PSP within three (3) business days of his or her request.

6. For all Applicants who apply in person, if after a reasonable time following the notice set forth in paragraph 4, an adverse action is taken based upon information which came, or partly came, from Records received from PSP, Employer will provide the affected Applicant the same information as that described in 5a, 5b, 5c and 5e above and will also inform the Applicant that:
  - a. Applicant may, if proper identification is provided, request a free copy of Applicant's Records from PSP from FMCSA-DOT if such request is made within 60-days of receiving notice that the adverse action has been taken.
7. Any information contained in any Record that Employer obtains from PSP will not be used in violation of any applicable federal or state or local equal employment opportunity laws or regulations; and
8. To the extent any information in the Record from the PSP is "personal information" subject to the Driver Privacy Protection Act, found at 18 U.S.C. sections 2721 and following, the Record will only be used for commercial drivers' license employer verification purposes as permitted by 18 U.S.C. section 2721(b)(9).

*If you would like to view 18 U.S.C. section 2721, click here <<http://www.law.cornell.edu/uscode/18/2721.html>>*

*If you would like to read the wording of the federal FCRA rules cited in this statement or if you would like more information about the Fair Credit Reporting Act and your obligations as a prospective employer under that Act, click here <[www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore)>*

**MANDATORY USE FOR ALL ACCOUNT HOLDERS**

**IMPORTANT NOTICE**

**REGARDING BACKGROUND REPORTS FROM THE PSP Online Service**

1. In connection with your application for employment with \_\_\_\_\_ (“Prospective Employer”), Prospective Employer, its employees, agents or contractors may obtain one or more reports regarding your driving, and safety inspection history from the Federal Motor Carrier Safety Administration (FMCSA).

When the application for employment is submitted in person, if the Prospective Employer uses any information it obtains from FMCSA in a decision to not hire you or to make any other adverse employment decision regarding you, the Prospective Employer will provide you with a copy of the report upon which its decision was based and a written summary of your rights under the Fair Credit Reporting Act before taking any final adverse action. If any final adverse action is taken against you based upon your driving history or safety report, the Prospective Employer will notify you that the action has been taken and that the action was based in part or in whole on this report.

When the application for employment is submitted by mail, telephone, computer, or other similar means, if the Prospective Employer uses any information it obtains from FMCSA in a decision to not hire you or to make any other adverse employment decision regarding you, the Prospective Employer must provide you within three business days of taking adverse action oral, written or electronic notification: that adverse action has been taken based in whole or in part on information obtained from FMCSA; the name, address, and the toll free telephone number of FMCSA; that the FMCSA did not make the decision to take the adverse action and is unable to provide you the specific reasons why the adverse action was taken; and that you may, upon providing proper identification, request a free copy of the report and may dispute with the FMCSA the accuracy or completeness of any information or report. If you request a copy of a driver record from the Prospective Employer who procured the report, then, within 3 business days of receiving your request, together with proper identification, the Prospective Employer must send or provide to you a copy of your report and a summary of your rights under the Fair Credit Reporting Act.

The Prospective Employer cannot obtain background reports from FMCSA unless you consent in writing.

If you agree that the Prospective Employer may obtain such background reports, please read the following and sign below:

**2. I authorize \_\_\_\_\_ (“Prospective Employer”) to access the FMCSA Pre-Employment Screening Program (PSP) system to seek information regarding my commercial driving safety record and information regarding my safety inspection history. I understand that I am consenting to the release of safety performance information including crash data from the previous five (5) years and inspection history from the previous three (3) years. I understand and acknowledge that this release of information may assist the Prospective Employer to make a determination regarding my suitability as an employee.**

3. I further understand that neither the Prospective Employer nor the FMCSA contractor supplying the crash and safety information has the capability to correct any safety data that appears to be incorrect. I understand I may challenge the accuracy of the data by submitting a request to <https://dataqs.fmcsa.dot.gov>. If I am challenging crash or inspection information reported by a State, FMCSA cannot change or correct this data. I understand my request will be forwarded by the DataQs system to the appropriate State for adjudication.

4. Please note: Any crash or inspection in which you were involved will display on your PSP report. Since the PSP report does not report, or assign, or imply fault, it will include all Commercial Motor Vehicle (CMV) crashes where you were a driver or co-driver and where those crashes were reported to FMCSA, regardless of fault. Similarly, all inspections, with or without violations, appear on the PSP report. State citations associated with FMCSR violations that have been adjudicated by a court of law will also appear, and remain, on a PSP report.



I have read the above Notice Regarding Background Reports provided to me by Prospective Employer and I understand that if I sign this consent form, Prospective Employer may obtain a report of my crash and inspection history. I hereby authorize Prospective Employer and its employees, authorized agents, and/or affiliates to obtain the information authorized above.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Please Print)

**NOTICE:** This form is made available to monthly account holders by NICT on behalf of the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA). Account holders are required by federal law to obtain an Applicant’s written or electronic consent prior to accessing the Applicant’s PSP report. Further, account holders are required by FMCSA to use the language provided in paragraphs 1-4 of this document to obtain a prospective Applicant’s consent. The language must be used in whole, exactly as provided. **The language may be included with other consent forms or language at the discretion of the account holder, provided the four paragraphs remain intact and the language is unchanged.**