

**Background Profiles, Inc. Subscriber Agreement**

**Terms and Conditions**

The parties agree as follows:

**1. BPI'S SERVICES:** BPI is a consumer reporting agency and provides, among other things, consumer reports and investigative consumer reports ("Screening Reports") as defined by the Fair Credit Reporting Act ("FCRA"). Subject to the terms and conditions of this Agreement, BPI agrees to furnish to Subscriber, upon Subscriber's request, Screening Reports in connection with any pre-employment or post-employment background screening of applicants ("Applicant").

**2. SUBSCRIBER'S GENERAL OBLIGATIONS:** Subscriber agrees that it will:

- (a) Be responsible for identifying and taking all steps necessary to comply with all applicable federal, state and local laws in connection with the procurement and use of Screening Reports including providing the Applicant with consent, disclosures and reports required by the FCRA. If the information products You obtain from BPI re to be used for an employment purpose, You certify that prior to obtaining or causing a "consumer report" and/or "investigative consumer report" to be obtained, a clear and conspicuous disclosure, in a document consisting solely of the disclosure, will be made in writing to the consumer explaining that a consumer report and/or investigative consumer report may be obtained for employment purposes. This disclosure will satisfy all requirements identified in Section 606(a)(1) of the FCRA, as well as any applicable state or local laws. If You obtain such consent in electronic form, you certify that you will comply with all applicable laws related to electronic signatures, including but not limited to the E-Sign Act. The consumer will have authorized, in writing, the obtaining of the report by You.;
- (b) Subscriber understands and agrees that each time it requests an Investigative Consumer Report (as defined by the FCRA) from BPI, Subscriber is representing and warranting to BPI that it has, with regard to the particular Applicant concerned, complied with Subscriber's obligations under the FCRA section 606(a)(2).
- (c) Assume responsibility for the final verification of the Applicant's identity;
- (d) Base all hiring decisions and actions on its own policies and procedures and acknowledge that BPI's employees will not render any opinions regarding the use or obtaining of Screening Reports;
- (e) Promptly pay for all services rendered hereunder in accordance with Schedules of Fees attached hereto. Subscriber acknowledges that Schedule of Fees may be revised if there are changes in laws, regulations or ordinances affect the direct or indirect costs of the Service delivery. If other revisions are required at any time during this agreement, Subscriber will be provided 60 days prior written notice and such revision(s) shall be subject to the prior written consent of Subscriber. In the event the Subscriber does not agree to the revision(s) of the Schedules of Fees, either party may terminate this Agreement upon 30 days prior written notice. BPI will charge a setup of \$125.00 to establish a business account. Fee may be refundable if qualified;
- (f) BPI payment terms are net thirty (30) days. If all payments due pursuant to the Schedule of Fees are not received by BPI within thirty (30) days after the date of the billing statement, BPI may charge interest of 1 ½ % per month, as permitted by law, and/or relinquish Subscriber's access privileges and release BPI from any obligation to perform any further services; and
- (g) Acknowledge that title, ownership and intellectual property rights in and to the BPI system of products and services shall remain in BPI and/or its suppliers. Subscriber further acknowledges that all content contained in any Screening Report is the property of the applicable content owner and may be protected by applicable contract and/or copyright law.
- (h) If advice is requested by Subscriber from BPI, Subscriber understands and acknowledges that BPI is not acting as legal counsel to Subscriber or providing legal advice and that all such matters discussed should be reviewed and approved by Subscriber's legal counsel prior to any actions taken by Subscriber.
- (i) Ensure that only Subscriber's designated representatives will request reports and that Subscriber will take steps to prevent unauthorized use.

**3. SUBSCRIBER'S CERTIFICATION OF FAIR CREDIT REPORTING ACT (FCRA) PERMISSIBLE PURPOSE(S)**

Subscriber hereby certifies that all of its orders for information products from BPI shall be made, and the resulting reports shall be used, for the following Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, permissible purposes only:

*(Please check all that apply)*

<input type="checkbox"/>	Section 604(a)(1). As ordered by a court or federal grand jury subpoena.
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<input type="checkbox"/>	Section 604(a)(2). As instructed by the consumer in writing.
<input type="checkbox"/>	Section 604(a)(3)(A). For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account.
<input checked="" type="checkbox"/>	Section 604(a)(3)(B). For employment purposes including evaluating a consumer for employment, promotion, reassignment or retention as an employee, where the consumer has given prior written permission.
<input type="checkbox"/>	Section 604 (a)(3)(D). To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status.
<input type="checkbox"/>	Section 604(a)(3)(F)(i). Where there is a legitimate business need, in connection with a business transaction that is initiated by the consumer.
<input type="checkbox"/>	Section 604(a)(3)(F)(ii). To review a consumer's account to determine whether the consumer continues to meet the terms of the account.
<input type="checkbox"/>	Section 604(a)(4) or (5). For use by state and/or local officials in connection with the determination of child support payments, or modifications and enforcement thereof.

**WHEN INFORMATION PRODUCTS ARE USED FOR EMPLOYMENT PURPOSES:** If the information products Subscriber obtains from BPI are to be used for an employment purpose, Subscriber certifies that prior to obtaining or causing a "consumer report" and/or "investigative consumer report" to be obtained, a clear and conspicuous disclosure, in a document consisting *solely of the disclosure*, will be made in writing to the consumer explaining that a consumer report and/or investigative consumer report may be obtained for employment purposes. This disclosure will satisfy all requirements identified in Section 606(a)(1) of the FCRA, as well as any applicable state or local laws. The consumer will have authorized, in writing, the obtaining of the report by Subscriber. If Subscriber obtains such consent in electronic form, Subscriber certifies that it will comply with all applicable laws related to electronic signatures, including but not limited to the E-Sign Act.

If the consumer is denied employment, or other adverse employment action is taken based in whole or in part on the information products provided by BPI, Subscriber will provide to the consumer: (1) a copy of the report, and (2) a description, in writing, of the rights of the consumer entitled: "A Summary of Your Rights Under the Fair Credit Reporting Act." After the appropriate waiting period, Subscriber will issue to the consumer notice of the adverse action taken, including the statutorily required notices identified in Section 615 of the Fair Credit Reporting Act. Subscriber hereby acknowledges that it has received a copy of the Summary of Rights (16 C.F.R. Part 601, Appendix A) and Notice of Users of Consumer Reports (16 C.F.R. Part 601, Appendix C).

Subscriber understands that the credit bureaus require specific written approval from BPI before the following persons, entities and/or businesses may obtain credit reports: private detectives, private detective agencies, private investigative companies, bail bondsmen, attorneys, law firms, credit counseling firms, security services, members of the media, resellers, financial counseling firms, credit repair clinics, pawn shops (except companies that do only Title pawn), check cashing companies (except companies that do only loans, no check cashing), genealogical or heir research firms, dating services, massage or tattoo services, businesses that operate out of an apartment, individuals seeking information for their own private use, adult entertainment services of any kind, companies that locate missing children, companies that handle third party repossession, companies seeking information in connection with time shares, subscriptions companies, individuals involved in spiritual counseling or persons or entities that are not an Subscriber or decision maker.

**4. INVESTIGATIVE CONSUMER REPORTS:** In addition to the disclosure requirements identified above, if the consumer makes a written request within a reasonable amount of time, Subscriber will provide: (1) information about whether an investigative consumer report has been requested; (2) if an investigative consumer report has been requested, written disclosure of the nature and scope of the investigation requested; and (3) BPI' contact information, including complete address and toll-free telephone number. This information will be provided to the consumer no later than five (5) days after the request for such disclosure was received from the consumer or such report was first requested, whichever is the latter.

**5. DIRECT ACCESS TERMINAL PROVISION:** This section applies if Subscriber will request any information from BPI via personal computer, through BPI On-Line remote software, the BPI secure website or e-mail, or any direct access terminal (in all cases a "DAT"). Subscriber will (i) restrict access to each DAT to those employees who have been trained on DAT; (ii) inform all trained DAT operators and other employees of Subscriber's FCRA and other obligations with respect to the request for and use of consumer reports; (iii) ensure that neither trained operators nor other employees will obtain consumer reports, information, or other information services for personal reasons or provide them to any unauthorized third party; and (iv) take all necessary measures to prevent unauthorized use of the DAT by any persons other than the trained operators for permissible purposes. Subscriber will immediately notify BPI if Subscriber suspects or knows of unauthorized communications with BPI's computer systems. Subscriber will inform trained DAT users and other employees with a need to know that unauthorized requests for consumer reports may subject them to civil and criminal liability under the FCRA.

BPI may audit Subscriber at any time to ensure Subscriber is obtaining authorization from consumer and may terminate Subscriber privileges at any time if BPI reasonably believes that the Subscriber has violated this section or the FCRA. BPI will not be responsible for transmission distortion, interruptions or failures of the DAT or any other information service. Subscriber will indemnify and hold harmless BPI from and against any direct and actual loss, cost, liability, and expense (including reasonable attorney's fees) resulting from (i) Subscriber's failure to abide by, or its employees' or agents' violation of this section; or (ii) any unauthorized requests for consumer reports, information or any information service using Subscriber's number and access codes provided by BPI. **THE BPI-ISSUED SUBSCRIBER CODES AND PASSWORDS MUST BE PROTECTED FROM UNAUTHORIZED USE. BPI-ISSUED SUBSCRIBER PASSWORDS MUST BE CHANGED IF THERE HAS BEEN ANY ACTUAL OR SUSPECTED COMPROMISE OR MISUSE OF THE PASSWORDS.**

**6. MOTOR VEHICLE RECORDS INFORMATION OBLIGATIONS:** If motor vehicle records (“Driving Records”) are requested to be included in the Screening Report with respect to any Applicant, Subscriber agrees that it:

- (a) will comply with all applicable federal and state laws related to the use and review of Driving Records, including the Driver’s Privacy Protection Act found at 18 U.S.C. Section 2721 et seq. (“DPPA”);
- (b) Is qualified to do business and validly holds all licenses required to operate Subscriber’s business in all states where Subscriber conducts business and/or has employees;
- (c) will use this information only in the normal course of business to obtain lawful information relating to the holder of a commercial driver’s license or to verify information provided by an applicant or employee.
- (d) will not use the Driving Records to build its own database or copy or otherwise reproduce the Driving Records except in connection with the review of the Applicant; and
- (e) will not sell, distribute or disseminate the Driving Records, in whole or in part, to any third party and shall use the Driving Records solely as an end user.
- (f) will submit to an audit of Applicant consent forms at BPI’s request. In the event of such request, reasonable notice would be provided and audit would take place during Subscriber’s regular business hours.

Subscriber agrees further that it will execute the required State forms attached hereto as Attachments C through G.

**7. INTERNATIONAL CRIMINAL RECORD SEARCHES:**

Subscriber understands that searches of foreign/international criminal records will be conducted through the services of a third-party independent contractor. Because of differences in foreign laws, language, and in the manner in which foreign records are maintained and reported, BPI cannot be either an insurer or a guarantor of the accuracy of the information reported. Subscriber therefore releases BPI and its affiliated companies, officers, agents, employees, and independent contractors from any liability whatsoever in connection with erroneous information received in response to an international/foreign criminal record search.

**8. DRUG TESTING OBLIGATIONS:** If drug testing is requested to be included in the Screening Report with respect to any Applicant, Subscriber agrees that it shall:

- (a) Comply with all Federal, state and local laws, including the FCRA, DOT, HIPAA and other applicable laws, with respect to the request for drug screening services provided by BPI and/or its vendors and the use of the results of such drug screening;
- (b) Comply with those Terms and Conditions set forth in Attachment I for pre-employment and post-employment drug testing;
- (c) Provide Applicant with chain of custody form and directions to an authorized collection site; and
- (d) Enter all requests for Drug Screening into the BPI system prior to specimen collection.

Subscriber agrees further that it will execute Attachment I attached hereto.

**9. BPI’S OBLIGATIONS:** BPI agrees that it will:

- (a) Comply with all applicable federal, state and local laws in the preparation and transmission of Screening Reports, including, without limitation, the FCRA;
- (b) Follow reasonable procedures to confirm, to the extent possible, that the reported public record information is complete and current;
- (c) Re-verify at no cost any disputed report when either the Subscriber or the Applicant makes a request in accordance with applicable law. BPI shall respond in writing on a timely basis;
- (d) Maintain consumer report information and transaction details for a minimum of five (5) years and upon written request by an Applicant to inform the Applicant of the substance of the report and information contained in the Screening Report delivered to Subscriber; and
- (e) Maintain the confidentiality of its data acquisition and verification methodology.

**10. LIMITATION OF LIABILITY:** BPI and Subscriber agree that unless BPI has committed gross negligence or engaged in intentional wrongdoing in the preparation and transmission of the Screening Report, BPI's total liability to Subscriber shall be limited to the return of the fees paid to BPI for the Screening Report and then only to the extent that the information contained in the Screening Report is found to be the sole basis upon which Subscriber incurred injury or damage resulting from the furnishing of the Screening Report by BPI. BPI and Subscriber agree that BPI shall not be liable to Subscriber for any other damages, costs or expenses whatsoever except as expressly agreed to above, and that neither party shall be liable to the other party for punitive, exemplary or consequential damages.

**11. INDEMNIFICATION:**

- (a) Subscriber shall indemnify, defend and hold BPI harmless from and against any and all claims, demands, costs, expenses and liabilities of any kind or nature whatsoever, including, without limitation, reasonable attorneys' fees and costs, which may be incurred by BPI based upon the illegal or wrongful use by Subscriber of the Screening Report, the gross negligence or intentional wrongdoing by Subscriber in connection with the use of the Screening Report, unsubstantiated claims brought by Subscriber's Applicant; or Subscriber's failure to comply with its obligations under the FCRA, E-Sign Act or other applicable laws in connection with the procurement or use of the Screening Report.
- (b) Subscriber shall indemnify, defend and hold BPI harmless from and against any and all claims, demands, costs, expenses and liabilities of any kind or nature whatsoever, including, without limitation, reasonable attorneys' fees and costs, which may be incurred by BPI based upon the use or dissemination of pre-adverse action letters, adverse action letters, consent forms, and other such documents provided by BPI to Subscriber. These documents are only provided as a courtesy to Subscriber and in no way substitute for legal advice.
- (c) BPI shall indemnify, defend and hold Subscriber harmless from and against all claims, damages, and liabilities, relating to its gross negligence or breach of this agreement.

**12. CONFIDENTIAL INFORMATION:** Subscriber agrees to treat all Confidential Information disclosed to it in any matter arising out of or relating to this Agreement and in accordance with the provisions of this Section and the Agreement. "Confidential Information" means all proprietary or secret data and sales or pricing information relating to company and its operations, employees, products or services, and, as to Subscriber, all information relating to any Affiliate, customer, potential customer, Agent, and/or independent sales outlet. Subscriber receiving such Confidential Information shall: (i) protect and maintain it in confidence, except to the extent necessary to carry out the purposes of this Agreement; and (ii) use at least the same degree of care in maintaining secrecy as it uses in maintaining the secrecy of its own Confidential Information, but in no event less than with reasonable care and diligence. At all times, both during this Agreement and after its termination,

Subscriber shall not disclose any Confidential Information without prior written consent of BPI.

**13. INFORMATION SECURITY:** Subscriber acknowledges and understands its obligation to maintain the confidentiality and integrity of any information and Subscriber identification numbers and passwords requested or received from or through BPI. Subscriber agrees to have reasonable procedures for the fair and equitable use of background information and to secure the confidentiality of private information. Subscriber agrees to take precautionary measures to protect the security and dissemination of this information including, for example, restricting terminal access, utilizing passwords to restrict access to terminal devices, and securing access to, dissemination and destruction of electronic and hard copy reports.

**14. INDEPENDENT CONTRACTOR:** The parties agree that the relationship of the parties created by this Agreement is that of independent contractor and not that of employer/employee, principal/agent, partnership, joint venture or representative of the other. Except as authorized hereunder, neither party shall represent to third parties that it is the employer, employee, principal, agent, joint venture or partner with, or representative of the other party.

**15. TERM:** The term of this Agreement shall continue in force without any fixed date of termination, but either party may terminate the Agreement for any reason upon thirty (30) days prior written notice to the other. BPI may terminate or revise the provisions of this Agreement immediately upon written notice if Subscriber is the debtor in a bankruptcy action or in an assignment for the benefit of creditors or if Subscriber undergoes a change in ownership. Termination of this Agreement by either party does not release Subscriber from its obligation to pay for services rendered or other responsibilities and agreements made. In addition to any and all other rights a party may have available according to law, if a party defaults by failing to perform any provision, term or condition of this Agreement the other party may terminate the Agreement by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have fifteen (15) days from the receipt of such notice to cure the default(s). Unless waived by party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

**16. WARRANTY:** Subscriber understands that BPI obtains the information reported in its information products from various third party sources "AS IS", and therefore is providing the information to Subscriber "AS IS". BPI makes no representation or warranty whatsoever, express or implied, including but not limited to, implied warranties of merchantability or fitness for particular purpose, or implied warranties arising from the course of dealing or a course of performance with respect to the accuracy, validity, or completeness of any information products and/or consumer reports, that the information products will meet Subscriber's needs, or will be provided on an uninterrupted basis; BPI expressly disclaims any and all such representations and warranties.

BPI will not be liable for any indirect, incidental, consequential, or special damages for loss of profits, whether incurred as a result of negligence or otherwise, even if BPI has been advised of the possibility of such damages. Subscriber shall indemnify, defend and hold harmless BPI from and against any and all claims, suits, proceedings, damages, costs, expenses (including, without limitation, reasonable attorneys' fees and court costs) brought or suffered by any third party arising or resulting from, or otherwise in connection with, any breach by Subscriber of any of its representations, warranties, or agreements in this Agreement or its negligence or willful misconduct.

BPI nevertheless agrees to be responsible for actual damages to the extent of and maximum stated herein for third party claims directly resulting from BPI's sole negligence in assembling the consumer report.

**FORCE MAJEURE:** Subscriber agrees that BPI is not responsible for any events or circumstances beyond its control (e.g., including but not limited to war, riots, embargoes, strikes and/or Acts of God) that prevent BPI from meeting its obligations under this Agreement.

**17. GOVERNING LAW AND VENUE:** This Agreement is deemed executed, to be performed in, and to be construed in accordance with the laws of the State of California. The parties hereto agree that the venue in all action or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State and Federal courts located in the County of Contra Costa, State of California.

**18. MISCELLANEOUS:** This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof. It supersedes any prior or contemporaneous agreements or representations. In the event of any conflict of terms between this Agreement and any subsequent purchase orders, statements of work or other order forms, the terms of this Agreement shall prevail.

This Agreement may be modified only by a writing executed by both parties. If any provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such provision(s) or part(s) shall be stricken from this Agreement and shall not affect the legality, enforceability or validity of the remainder of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A signature on a copy of this Agreement received by either party by facsimile is binding upon the other party as an original. The parties shall treat a photocopy of such facsimile as a duplicate original. The individuals signing below represent that they are duly authorized to do so.

Subscriber may not assign, resell, or transfer this Agreement without the prior written consent of BPI.

The headings of each section shall have no effect upon the construction or interpretation of any part of this Agreement.

**EXHIBIT A**  
**Qualified Subscriber Terms and Conditions**

EVS Employment Information (as defined below) will be received by Subscriber through CRA subject to the following conditions (the "Terms and Conditions"):

1. Any information services and data originating from EVS (the "EVS Employment Information") will be requested only for Subscriber's exclusive use and held in strict confidence except to the extent that disclosure to others is required or permitted by law. Only designated representatives of Subscriber will request EVS Employment Information on Subscriber's employees, and employees will be forbidden to obtain EVS Employment Information on themselves, associates or any other persons except in the exercise of their official duties. Subscriber will not disclose EVS Employment Information to the subject of the EVS Employment Information except as permitted or required by law, but will refer the subject to EVS.
  2. Subscriber will hold EVS and all its agents harmless on account of any expense or damage arising or resulting from the publishing or other disclosure of EVS Employment Information by Subscriber, its employees or agents contrary to the conditions of Section 1 above or applicable law.
  3. Subscriber recognizes that EVS does not guarantee the accuracy or completeness of EVS Employment Information and Subscriber releases EVS and EVS's agents, employees, affiliated credit reporting agencies and independent contractors from any liability, including negligence, in connection with the provision of EVS Employment Information and from any loss or expense suffered by Subscriber resulting directly or indirectly from EVS Employment Information. Subscriber covenants not to sue or maintain any claim, cause of action, demand, cross-action, counterclaim, third-party action or other form of pleading against EVS, EVS's agents, employees, affiliated credit reporting agencies, or independent contractors arising out of or relating in any way to the accuracy, validity, or completeness of any EVS Employment Information.
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