

## eLUMINATE - Terms and Conditions of Service – Form T108.1

- 1. General.** These eLUMINATE - Terms and Conditions of Service – Form T108.1 (the “**Conditions**”) and the “eLUMINATE – Scope of Services” (the “**Scope**” and, together with the Conditions, the “**Agreement**”) shall apply to **Data Driven Safety, LLC (“DDS”)** and the other legal entity listed in the first paragraph of the Scope (hereinafter, “**Subscriber**”) with respect to all aspects of DDS’s provision of the governmental record retrieval and delivery services more particularly described throughout this Agreement. DDS objects to any additional or different terms included in any other form submitted by Subscriber and such additional or different terms shall be without force or effect as they are deemed not to be included in this Agreement.
- 2. Term and Termination.** Unless earlier terminated in accordance herewith, this Agreement shall be in effect for the time period specified in the Scope (the “**Term**”). This Agreement may be terminated by either Subscriber or DDS after thirty (30) days’ prior written notice (the “**Notice Period**”) upon the occurrence by the other party of a breach of any material obligation owed hereunder; provided, however, this Agreement will remain in full force and effect if the breaching party remedies the failure during the Notice Period. Termination of this Agreement shall not relieve either party hereto from any rights, liabilities or obligations that accrued prior to the date of termination. All provisions that survive by their terms shall survive the termination of this Agreement.
- 3. Fees.** In exchange for the Services (as defined below), Subscriber shall timely pay DDS the fees (hereinafter, the “**Fees**”) in the amount and manner specified in the Scope. The Fees do not include any sales, use or other governmental taxes. Subscriber is responsible for paying all such governmental taxes and levies. Notwithstanding Section 20 hereof, invoices may be delivered to Subscriber electronically. Unless specified differently in the Scope, Subscriber shall make full payment within ten (10) days of the date of invoice. If Fees exceed \$10,000 in any calendar month, then, within thirty (30) days after being requested by DDS, Subscriber shall make all future monthly payments of the Fees through ACH in the manner reasonably requested by DDS from time to time. Subscriber shall pay interest from the date of delinquency until paid at a rate of 1.5% percent per month. Subscriber shall reimburse DDS for all costs and expenses, including reasonable attorneys' fees, incurred by DDS in its efforts to enforce this Section 3.
- 4. DDS Service Obligations.** Throughout the Term, DDS will use reasonable efforts to access, maintain and (as reasonably determined by DDS) modify, augment and expand its proprietary collection of governmental information sources (collectively, the “**Source Data**”) to provide the Services to Subscriber in a timely, professional and workmanlike manner.
- 5. Certain Data Limitations.** Source Data is created by (or on behalf of) governmental agencies and/or judicial entities without the supervision of DDS. Source Data may not be complete, timely or error-free. The accuracy and comprehensiveness of the Services is dependent, in part, on the timely transmission by Subscriber of accurate personal information for all Participants then-enrolled in the Services (the “**Participant Data**” and, together with the Source Data, the “**Input Data**”). The Services do not include any obligation by DDS to verify or correct the Input Data. For clarity, Subscriber acknowledges that DDS cannot and shall not be either an insurer or guarantor of the accuracy, timeliness, correctness or completeness of the Input Data. The Services will be adversely affected by Input Data that is missing, incomplete, erroneous, or made available in an untimely or unacceptable manner to DDS.

6. Service Categories. Subscriber has contracted with DDS as of the date indicated in the Scope (the “**Effective Date**”) to obtain “Direct Alert” services (“**Direct Services**”) and/or “Oversight Alert” services (“**Oversight Services**”). For purposes of this Agreement, all services affirmatively indicated as applicable in the Scope of this Agreement shall be referred to hereinafter as the “**Services**”.

A. Direct Services. To the extent that Subscriber has elected to receive Direct Services (as affirmatively indicated in the Scope), DDS shall use commercially reasonable efforts throughout the Term to provide Subscriber with a copy of governmental records (each a “**Governmental Record**”) reflecting the initiation of a criminal case in response to a reportable violation (“**Reportable Charge**”) and/or reflecting a reportable conviction of record to a criminal charge (“**Reportable Conviction**”) and, together with the Reportable Charges, the “**Reportable Offenses**”) involving the employees, contractors and/or volunteers currently and actively enrolled in the Service, as such may change from time to time (the “**Participants**”) of Subscriber.

B. Oversight Services. To the extent that Subscriber has elected to receive Oversight Services (as affirmatively indicated in the Scope), DDS shall use commercially reasonable efforts throughout the Term to provide Subscriber with electronic notification each time that one of Subscriber’s third-party vendors, customers, independent contractors and/or supplier networks (each, a “**Subscriber Contractor**”) fails to remove from enrollment in the Services one or more of Subscriber Contractor’s Participants for which a Reportable Offense was reported to the applicable Subscriber Contractor by DDS (each a “**Prohibited Contractor Employee**”) in the timeframe specified in the Scope. Subscriber acknowledges that such Oversight Services shall not include the disclosure by DDS to Subscriber of any Reportable Offenses for which a Subscriber Contractor timely removes a Prohibited Contractor Employee from the Service.

7. Subscriber Account Profiles. The determination as to whether a criminal offense is a Reportable Offense shall be made by DDS in strict accordance with the DDS-approved criteria selected by Subscriber from time to time.

A. Direct Alert Profiles. No offense shall be deemed a Reportable Offense unless the Governmental Record demonstrates that the prohibited activity meets Subscriber’s previously established notification criteria for offense severity, offense relevancy and such other limitations as may be agreed by the parties hereto from time to time. All such Subscriber-mandated requirements shall be recorded as selections in Subscriber’s monitoring profile(s) (each a “**Direct Alert Profile**”). Subscriber shall be permitted two (2) Direct Alert Profiles at no cost per every five hundred (500) Participants enrolled. Additional Direct Alert Profiles (each an “**Additional Profile**”) shall be priced as indicated in the Scope. Every Participant shall be assigned by Subscriber to only one (1) Direct Alert Profile.

B. Oversight Alert Profiles. The specification of the deliverables for the Oversight Services shall be contained in the Oversight Alert Profile (each an “**Oversight Alert Profile**”). Subscriber shall be permitted one (1) Direct Alert Profile at no cost per every five hundred (500) Subscriber Contractor Participants enrolled. Additional Oversight Alert Profiles (each an “**Additional Profile**”) shall be priced as indicated in the Scope. Each Subscriber Contractor shall be assigned by Subscriber to only one (1) Oversight Alert Profile. Subscriber acknowledges that Oversight Services shall not include the disclosure by DDS to Subscriber of any Reportable Offenses for which a Subscriber Contractor timely removes a Prohibited Contractor Employee from the Service.

8. Reportable Offenses.

A. Reportable Convictions. To constitute a Reportable Conviction, the Governmental Record must establish that the Participant was adjudicated “guilty” by a U.S. state or local trial court claiming competent jurisdiction over the Participant. For the avoidance of doubt, Subscriber agrees that the determination of “guilty” shall not be deemed to include any disposition to a charge where the trial court’s sentencing of a Participant includes a diversionary or deferral program, unless otherwise indicated in the Scope. In addition, to constitute a Reportable Conviction, the Governmental Record must establish that the final adverse disposition was pronounced by the applicable trial court after the Participant’s enrollment date into the Services (the “**Enrollment Date**”). To constitute a reportable conviction, the Participant's statutory appeal-as-a-right period (the “**Appeal Period**”) must also have expired. Subscriber acknowledges that waiting for the Appeal Period to expire is an important aspect of the Services as it serves to protect the Participants’ right to additional judicial review.

B. Reportable Charge. No Reportable Charge for any Participant shall be provided to Subscriber unless specifically contemplated by the criteria selected by Subscriber in its applicable Monitoring Profile(s). Reportable Charges shall be comprised of charges initiated against a Participant alleging a criminal offense but for which a final disposition has not yet been entered by the trial court. To constitute a Reportable Charge, the Governmental Record must, at a minimum, establish that the Participant was charged with an offense that meets the Monitoring Profile criteria and that the underlying alleged unlawful activity occurred after the Enrollment Date.

9. Alerts – Direct Services. The only output provided by the Direct Services that shall contain any information regarding a Participant’s involvement in criminal activity (or any other behavior) shall be limited to Governmental Records presented to Subscriber as an unmodified (and, typically electronic) copy of the original record. For purposes of this Agreement, when a Governmental Record is provided to a Subscriber in such a manner it shall be referred to hereinafter as an “**Alert**”.

A. Reportable Conviction Alerts. Alerts for Reportable Convictions shall be limited to individual criminal charges (or sets of charges) that were disposed by a single trial court within a 24-hour period and purportedly relate to a single Participant.

B. Reportable Charges Alerts. Alerts for Reportable Charges shall be limited to individual charges (or sets of charges) premised on a single event or a related series of events and purportedly relate to a single Participant. Subscriber acknowledges that the mere charging of a Participant with a criminal offense does not establish that criminal conduct has occurred and that, in fact, many Reportable Charges will eventually result in a dismissal or reduction in severity.

To the extent commercially reasonable (as determined in the sole discretion of DDS), all Alerts shall contain a stamp, signature or certification as to accuracy by a governmental employee or agent. In no event shall DDS provide an Alert based on a Governmental Record that was created by a governmental agency thirty-one (31) or more days prior to the date of transmission to Subscriber.

10. Subscriber Covenants, Representations and Warranties. As a material inducement for DDS to enter into this Agreement and for the continued provision of Services, Subscriber covenants, represents and warranties to DDS as of the Effective Date and continuously throughout the Term that each of the following statements is accurate and correct.

A. To the extent any Services are provided to Subscriber, then:

1). Subscriber shall use the Services and all information obtained thereby in accordance with all applicable federal and state laws including the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681 et seq., (hereafter, the “FCRA”) as amended and interpreted by published guidance proffered by the Equal Employment Opportunity Commission as each may be amended or modified from time to time (collectively, the “Laws”).

2). The Services and all information obtained thereby have not, shall not and will not be used by Subscriber for the purpose of investigating any person’s credit worthiness, credit standing or credit capacity.

B. To the extent Direct Services are provided to Subscriber, then Subscriber warrants, covenants and certifies that:

1). the Services shall be used solely for the purpose of considering a Participant for continued employment (or authority to volunteer/contract), promotion and/or retention.

2). Subscriber has provided each employee-Participant with a clear and conspicuous written disclosure (that has not been withdrawn or modified), in a document consisting solely of the disclosure, that a consumer report is being requested for employment purposes, and it has obtained the written authorization from the Participant to obtain a consumer report for employment purposes prior to enrollment in the Services and that such consent meets the definition of “evergreen” or “one-time blanket” as provided by FTC Staff Report 51.

3). The Participant Data provided or made available to DDS is, to the best of Subscriber’s knowledge, correct, complete and accurate as of the date of transmission to DDS and a mechanism reasonably designed to provide timely Participant Data updates has or will be implemented within 30 days of the Effective Date by Subscriber.

4). No Alert (including any portion of a Governmental Record) has, will or shall be provided by Subscriber or at Subscriber’s direction to any person other than (i) a Participant to whom the Alert relates, or (ii) otherwise as required by Laws.

5). No aspect of the Services or any information obtained thereby will be used to make any “adverse decision” (as that term is defined in the FCRA) in any aspect of the pre-employment evaluation or hiring process of Subscriber.

6). No aspect of the Services or any information obtained thereby will be used to make any “adverse decision” (as that term is defined in the FCRA) for employment purposes relating to current employees unless and to the extent:

a). Subscriber shall ensure the applicable Participant is provided with a copy of the Alert;

b). Subscriber shall ensure the applicable Participant is provided with a copy of the “Consumer Rights,” in the format approved by the Consumer Financial Protection Bureau (CFPB) and in a language appropriate to the Participant;

c). Subscriber shall ensure the applicable Participant is provided with “ample time” to dispute any information contained in the Alert (collectively with subsections a-b above, the “**Pre-Adverse Action**”);

d). The Alert relates to the job function of the Participant; and

e). Subscriber provides a written notification of any “adverse decision” affecting Participant’s employment after Participant has been provided “ample time” to dispute the information contained in the Pre-Adverse Action.

7). To the extent that Subscriber enrolls employees that reside or work in California in the Services, Subscriber shall list the name, address and telephone number of DDS, as such may be updated by DDS upon written notice to Subscriber from time to time, in its compliance with the separate written disclosure obligation under the California Investigative Consumer Reporting Agencies Act Cal. Civil Code 1786-1786.60, et seq (the “**ICRAA**”).

8). With respect to any Alert for a Reportable Charge, Subscriber shall promptly conduct a pre-decision inquiry into whether the conduct underlying each Reportable Offense justifies an adverse employment action in accordance and conformity with all published EEOC guidance; such an investigation process shall include reasonable efforts to confirm that the Alert is correct and relates to the relevant Participant, noting that the Governmental Records, the Source Data, the Participant Data and DDS matching algorithms may individually or in combination produce erroneous results from time to time.

9). With respect to Alerts for Reportable Convictions, Subscriber shall at all times take reasonable efforts to ensure it completes a pre-decision investigation process designed to confirm that the Alert is correct and relates to the relevant Participant, noting that the Governmental Records, the Source Data, the Participant Data and DDS matching algorithms may individually or combination produce erroneous results from time to time.

10). No “adverse action” (as that term is defined by the FCRA) will be taken by Subscriber based on any aspect of the Service without first conducting a timely and appropriate “investigation” (as that term is used in the FCRA) that comports with all relevant legal requirements and industry norms to confirm that the Participant has committed an offense that warrants adverse employment action and that all requisite legal protections required by Law (including those discussed above) have been provided in a timely manner to the Participant.

11). Each Participant enrolled in the Service through a Direct Alert Profile that requires Reportable Conviction monitoring is required and shall continue to be required throughout such period of enrollment by pre-existing Subscriber policy to self-report certain criminal convictions.

12). Each Participant enrolled in the Service through a Direct Alert Profile that requires Reportable Charge monitoring is required and shall continue to be required throughout such period of enrollment by pre-existing Subscriber policy to self-report the initiation of certain criminal charges.

13). Subscriber shall take no “adverse action” (as that term is defined by the FCRA) for any existing employee based on the Services without first treating the applicable Governmental

Record as if it were a “consumer report” (as that term is defined by the FCRA) and complying with all relevant obligations including the pre- and post-adverse action processes.

14). Subscriber warrants that it is the “end user” (as that term is defined by the FCRA) of the information provided through the Services and agrees to limit use and dissemination of such information solely to those employees within its organization with a documented need to know (the “**Authorized Users**”) and no other use shall be made of the information provided through the Services.

15). Subscriber shall not discriminate against any Participant or otherwise use the Services or the information contained in an Alert to violate any applicable federal, state or local equal opportunity law or regulation.

C. To the extent Oversight Services are provided to Subscriber, then each Subscriber Contractor has consented in writing to the Oversight Services offered to Subscriber and no such consent has been revoked, rescinded or otherwise modified.

11. Data Privacy and Security. DDS has adopted the Data Driven Safety Privacy and Data Security Policy, a copy of which is available at [www.datadrivensafety.com](http://www.datadrivensafety.com) (the “**Principles**”). These Principles may be updated from time to time by DDS. DDS shall adhere to these Principles in recognition of the importance of appropriate privacy protections for the Participant Data. Subscriber shall ensure that the Services are accessed and utilized only by the Authorized Users in compliance with privacy protection policies and practices that when, taken as a whole, are at least as protective of the rights of the Participants as the Principles. Subscriber is responsible for the administration and control of Subscriber's account access codes. Both Parties hereto shall maintain reasonable security procedures and practices to avoid improper or unlawful publication, display, delivery or dissemination of the Participant Data or information obtained from the Services. All Participant Data will be provided by Subscriber to DDS through secure protocol as may be reasonably required by DDS from time to time. DDS may, at any time, impose additional restrictions on the Subscriber's use of the Services or any portion thereof if such restrictions are reasonably designed by DDS to adhere to the Principles and, written notification, Subscriber agrees to use its best efforts to promptly comply with such restrictions.

12. Ownership and License. DDS acknowledges that, as between the Parties, Subscriber owns all right, title and interest in and to the Governmental Records that are provided to Subscriber as an Alert. Subscriber hereby grants to DDS a limited, personal, nonexclusive, nontransferable license to possess, store or provide the Alerts to those Participant(s) in Subscriber’s organization tasked with furthering Subscriber's Safety and/or Human Resource activities. Subscriber acknowledges that, as between the Parties, DDS owns all right, title and interest in and to the Source Data. Subject to the terms hereof, including the timely payment of the fees, DDS hereby grants to Subscriber a limited, personal, nonexclusive, nontransferable license to provide the content of the Services during the term of this Agreement to those Participants in its organization tasked with furthering Subscriber's Safety and/or Human Resource activities. All rights, whether express or implied, not expressly granted to Subscriber hereunder are reserved exclusively to DDS.

13. Certain Use Limitations. Subscriber shall not directly or indirectly (i) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortuous material, or to store or transmit material in violation of the privacy rights of anyone, (iii) use the Services to store or transmit “*malicious code*” (as that term is commonly used in the United States software industry), (iv) interfere with or disrupt the integrity or performance of the Services or the materials and information contained

therein, (v) attempt to gain unauthorized access to any information or systems owned, used or managed by DDS, (vi) modify or create derivative works of the Services, (vii) defeat, avoid, bypass, remove, deactivate or otherwise circumvent any software protection mechanism in the Services, including, without limitation, any such mechanism used to restrict or control the functionality of the Services, or (viii) derive source code, source data, underlying ideas, algorithms, logic structure or organization from the Services, or (ix) use the Services to discriminate, harass or intimidate any person.

14. Record Retention. Unless otherwise agreed in the Scope, DDS shall have no obligation after the termination or expiration of this Agreement to maintain or provide Subscriber with any information related to the Services.

15. No Warranties or Representations. Subscriber acknowledges and agrees that the Services are strictly provided on an "AS-IS" basis and all warranties (including the implied warranties of correctness, appropriateness, comprehensiveness, completeness, accuracy, timeliness, merchantability and fitness for a particular purpose) are disclaimed by DDS. For the sake of clarity, no warranty or representation is made that interfaces accessible to Subscriber will operate uninterrupted or error-free.

16. Force Majeure. DDS shall not be required to perform (and Subscriber shall not be obligated to pay corresponding Fees for) the Services to the extent the Services are materially and adversely affected by circumstances beyond the reasonable control of DDS, including without limitation, changes in the accessibility or availability of the Source Data, changes in laws affecting the Services, acts of God (including, fire, flood, earthquakes), civil unrest, acts of terror, strikes or other labor problems, or Internet service provider failures or delays.

17. DDS Indemnification. DDS shall, to the extent DDS breaches this Agreement, indemnify, defend and hold Subscriber, its directors, officers, employees, contractors, agents and third party providers harmless from any and all resulting losses, claims, damages, or penalties (collectively, the "**Losses**") sustained by Subscriber.

18. Subscriber Indemnification and Waiver. Subscriber shall, to the extent Subscriber breaches this Agreement, indemnify, defend and hold DDS, its directors, officers, employees, contractors, agents and third party providers harmless from any and all Losses, including those resulting, directly or indirectly, from an employment or contracting decision made by Subscriber alleged to have relied in whole or in part on the Services. Subscriber shall assert no claim and waives liability against DDS for any inaccurate or incomplete information contained in any Governmental Record.

19. LIMITATION OF LIABILITY. DDS SHALL IN NO EVENT BE LIABLE TO SUBSCRIBER, ITS DIRECTORS, OFFICERS, PARTICIPANTS, CONTRACTORS AGENTS OR TO ANY OTHER PERSON CLAIMING THROUGH SUBSCRIBER FOR THE CONTENT, COMPLETENESS ACCURACY OR TIMELINESS (OR THE LACK THEREOF) OF THE SERVICES, THE ALERTS OR THE GOVERNMENTAL RECORDS. NO LIABILITY SHALL ATTACH, ABSENT A DEMONSTRATED SHOWING OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF DDS THAT HAS RESULTED IN THIRD PARTY LOSSES OR DAMAGES THAT WERE CREATED, IN WHOLE OR IN PART, FROM (i) ANY ACTION TAKEN, OR ANY DELAY OR FAILURE TO TAKE ACTION BY SUBSCRIBER OR ANY OTHER PERSON OR ENTITY AS A RESULT OF THE SERVICES, OR (ii) THE OMISSIONS IN OBTAINING, REPORTING, COMMUNICATING OR DELIVERING THE SERVICES OR IN OTHERWISE PERFORMING THIS AGREEMENT. IF LIABILITY CAN BE IMPOSED ON DDS PURSUANT TO THIS PROVISION, THEN SUBSCRIBER AGREES THAT THE TOTAL AGGREGATE LIABILITY FOR

ANY AND ALL LOSSES, CLAIMS, DAMAGES OR INJURIES ARISING OUT OF ANY ACT OR OMISSION OF DDS IN CONNECTION WITH ANYTHING DONE, TO BE DONE OR FURNISHED UNDER THIS AGREEMENT, REGARDLESS OF THE CAUSE OF THE ACTION, LOSS, CLAIM, DAMAGE OR INJURY SHALL NOT EXCEED THE FEES PAID TO DDS BY SUBSCRIBER FOR THE SERVICES RENDERED HEREUNDER. IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCURRED AS A RESULT OF THIS AGREEMENT OR THE SERVICES.

20. Miscellaneous. The rights and obligations of the parties hereto shall be governed by the laws of the State of New York (excluding its conflicts of law principals). Subscriber shall not assign or transfer this Agreement without the prior written consent of DDS and any purported assignment is void. DDS shall not be bound by any contract or any modification of this Agreement unless and until approved in writing by an officer of DDS. Execution of this Agreement does not require either Party to enter into any future transaction with the other Party, unless otherwise specified in the Scope. DDS does not undertake any obligation to advise Subscriber of legal matters and in no event shall Subscriber rely on the Services as legal advice. Nothing in this Agreement shall confer on any third party (including Participants of Subscriber's organization) any rights or remedies under this Agreement. If any term of this Agreement is invalid or unenforceable under any Law, such term shall be deemed reformed or deleted, to the minimum extent necessary to comply with such law or rule, and the remaining provisions of this Agreement shall remain in full force and effect. The failure of either party at any time to require performance by the other of any provision of this Agreement will in no way affect that party's right to require such performance at any time thereafter. Any notice, request, consent or other document to be given hereunder shall be in writing and delivered personally, by overnight courier service or sent by registered/certified mail, postage prepaid, to the other Party at the address as set forth in the Scope and deemed received two (2) business days after confirmation of sending, or, if earlier, upon proof of delivery. This Agreement contains the entire agreement between the Parties hereto regarding the subject matter contained herein. All prior negotiations and discussions (whether in writing or made orally) by and between the parties hereto which are not set forth in this Agreement or specifically incorporated herein by reference are merged into this Agreement and have no force or effect separate and apart from this Agreement.