

21-1

FILED

MAY 07 2021

Don J. Hay
Sangamon County Clerk

**ON-LINE ACCESS AGREEMENT
BETWEEN
ILLINOIS SECRETARY OF STATE
AND
SANGAMON COUNTY, OFFICE OF THE CLERK OF THE CIRCUIT COURT
FOR RETRIEVING COMPUTER STORED INFORMATION**

WHEREAS, the Sangamon County, Office of the Clerk of the Circuit Court, with its principal address at 200 South 9th Street, Springfield, Illinois 62705 hereinafter known as "Seeker", seeks to obtain information maintained on the computer files of the Driver Services Department of the Office of the Secretary of State of Illinois, with its principal address at the Driver Services Department, 298 Howlett Building, Springfield, Illinois 62756 and of the Vehicle Services Department of the Office of the Secretary of State of Illinois, with its principal address at the Vehicle Services Department, 312 Howlett Building, Springfield, Illinois 62756 hereinafter collectively known as "SOS" and Seeker and SOS are collectively known as the "Parties" and each a "Party," pertaining to one or more groups of files described in Section 1, Computer Access;

WHEREAS, Seeker is authorized to access certain information maintained in such files which is now available by a search of the SOS records for purposes outlined in Exhibit A and in accordance with the Federal Driver's Privacy Protection Act (18 USC 2721, et. seq.) ("DPPA") and other applicable Federal and Illinois laws;

WHEREAS, the files prescribed in Section 1, Computer Access are "unprotected" in that any Party possessing the required access code can obtain information contained in the files;

WHEREAS, SOS has decided to grant Seeker retrieval access to these files by on-line access, subject to certain access code security requirements;

NOW THEREFORE, in consideration of the foregoing premises, the mutual agreements of the Parties, and other consideration, the receipt and adequacy of which are hereby acknowledged, it is hereby agreed by and between Seeker and SOS, that the following terms and conditions shall control the agreed access to computer files:

1. COMPUTER ACCESS:

SOS will provide on-line access to Seeker five (5) days a week (Monday through Friday, 7:00 a.m. to 7:00 p.m.). Seeker shall be authorized to access the following database files ONLY:

From the Driver Services Department: Driver abstracts which are a documented record of only current driver's license number issuance information, convictions, supervisions, and orders entered revoking, suspending or canceling a driver's license or privilege. All other information shall remain confidential and will not be available to Seeker.

From the Vehicle Services Department: Vehicle title and registration data limited to name, address, and vehicle make, model, license plate and vehicle identification number.

2. COMPUTER EQUIPMENT:

Seeker shall be responsible for and acknowledges the following:

- a. Obtaining and maintaining access to the Internet. SOS will levy no charges for the communications portion of this Agreement.
- b. SOS will assist with setup via telephone; however, Seeker is responsible for the client workstation and dealing with its internet provider should traffic be blocked, intentionally or unintentionally. SOS will attempt to utilize a digital certificate for authentication. Digital certificates are provided free of charge. The number of devices allowed to access

the SOS portal shall be kept to a minimum. The maximum number will be determined at the time of the initial setup.

3. COMPUTER SECURITY:

- a. Seeker shall take reasonable measures, in accordance with industry-recognized leading practices, necessary to prevent the unauthorized use and disclosure of SOS information and to prevent unauthorized persons or entities from obtaining or using such information. Seeker shall be liable for any unauthorized use and disclosure of SOS data. Seeker shall abide by all applicable provisions of the Personal Information Protection Act. (815 ILCS 530) ("PIPA"), including those governing the disposal of SOS data. This includes, but is not limited to: data breaches, accessing the database(s) without authority, allowing unauthorized persons to access the database(s) or allowing any unauthorized person to view SOS information or altering any existing SOS information in any form. Seeker must immediately report to SOS, via telephone and in writing, any unauthorized use, unauthorized access or misuse of SOS information, including any suspected or actual breach or intrusion upon Seeker's data security system that may involve SOS information, to SOS by contacting both the Secretary of State Department of Information Technology (217/558-0049 and 217/557-9000) and the Office of the General Counsel (217/785-3094). If an actual or suspected breach involves SOS information, the notification must include all names, addresses, driver's license numbers and/or identification card numbers and license plate information of the files Seeker knows or has reason to believe may have been accessed. Furthermore, in accordance with the PIPA, Seeker shall notify Illinois residents if there is any unauthorized use or misuse of their personal information, or a breach involving their SOS data within Seeker's security system. (815 ILCS 530).
- b. If a data security breach occurs that impacts or may have impacted SOS data during the term of this Agreement, Seeker shall allow a forensics expert selected by SOS to conduct a full and thorough investigation and report his or her findings at Seeker's expense. Seeker shall cooperate fully with said forensic expert during his or her investigation and shall provide him or her with all documentation, access or other assistance the expert shall deem necessary. Seeker agrees SOS shall have full and unfettered access to the results of any and all such investigations.
- c. SOS will provide Seeker, in documents separate from this Agreement, with an agency code for VPN access. Seeker shall be responsible for the security of this information, including the prevention of any unauthorized use. Ultimately, Seeker shall be responsible for any unauthorized use and/or access. Seeker acknowledges that SOS has the authority to change the requirements for accessing the system as technological, fiscal, security or other considerations dictate. SOS agrees to provide Seeker with as much prior notice of such changes as is practicable. Upon termination of this Agreement, Seeker shall immediately return to SOS all documents concerning access to SOS data, whether tangible, electronic or otherwise, in its custody, possession or control, and shall immediately cease using such access.
- d. Prior to the execution of this Agreement and upon request, Seeker shall provide to SOS the names, addresses and phone numbers of all persons responsible for managing and/or handling SOS data or otherwise executing the provisions of this Agreement on behalf of the Seeker. SOS must issue an individual RACF ID to every officer and employee of Seeker before the officer or employee may access SOS data. Under no circumstances may officers or employees of Seeker share a RACF ID. When Seeker no longer employs an officer or

employee, Seeker must immediately notify SOS so that the RACF ID of that officer or employee can be terminated. Breach of the provisions of this paragraph shall be deemed a material breach and will result in this Agreement being terminated by SOS.

- e. This Agreement authorizes Seeker only to retrieve data from the database(s) set forth in Section 1, Computer Access. Seeker shall not enter any information on any SOS file, nor shall Seeker alter, or attempt to alter, any existing SOS file in any form.
- f. This Agreement authorizes SOS or its representatives access to Seeker's system to audit, verify and assess security controls. Failure to provide adequate security controls is a material breach and cause for immediate termination.
- g. Seeker acknowledges and agrees that SOS data shall not be transferred nor accessed outside of the United States, electronically or otherwise.
- h. SOS security policies and all data security standards contained therein, as amended, shall be incorporated into this Agreement by reference. Seeker shall also adhere to the International Standards Organization ("ISO") 27001 and ISO 27002. Upon notice to Seeker, SOS reserves the exclusive right to add and/or modify these and other data security requirements contained in this Agreement at any time during its term.
- i. As a condition precedent of this contract, Seeker agrees to complete the SOS Network Security Assessment, if required by SOS, and to return same to SOS prior to the execution of this contract.

4. DATA MINING PROHIBITIONS:

- a. Seeker agrees to refrain from any type of data mining or web mining of SOS data.
- b. Prohibited data mining/web mining includes, but is not limited to, use of website copying software, web data pre-processing, creation of web metrics and mathematical models, web log analysis, static and dynamic visitor profiling, intelligent information retrieval, hyperlink analysis, use of spider, crawl or bot programs (vertical search engines), web usage mining, web structure mining, web content mining, data/information extraction, web information integration and schema matching, knowledge synthesis, segmenting, noise detection, use of topic-sensitive PageRank software, use of filtering techniques, meta-search engines, or any other type of automated search of information that goes beyond keyword extraction.
- c. Violation of this section is considered a material breach and will result in termination of online access.
- d. Data/Web mining is considered "Computer Tampering," a criminal act under the Illinois Criminal Code. A person who commits the offense of "Computer Tampering" is guilty of a Class 4 Felony. (720 ILCS 5/17-51).

5. USE OF INFORMATION:

- a. Seeker agrees that it shall obtain the data from SOS on an "AS IS" basis. Seeker acknowledges that SOS compiles the data as required by statute for its own public purposes, and that by providing such data to Seeker pursuant to this Agreement, SOS is providing only access convenient to Seeker. SOS assumes no responsibility for the accuracy of the data and disclaims any liability for damages, costs, and/or expenses,

including, without limitation, consequential damages, arising or resulting from any inaccurate data.

- b. Seeker represents that this request for information is in accordance with Federal and Illinois laws and the data shall not be used for criminal or immoral purposes. Seeker has furnished a Certified Statement of Use(s) (in the form of a sworn and notarized affidavit) setting forth the specific uses to be made of the data received from SOS. This Certified Statement of Use(s) shall be subject to the approval of SOS and shall be incorporated into this Agreement as Exhibit A. Seeker agrees neither to deviate from nor to alter the Certified Statement of Use(s) without the prior express written consent of SOS. This Agreement authorizes SOS or its representative to audit Seeker, including any and all computer systems and documents, to verify that the data is being used only in accordance with the approved Certified Statement of Use(s).
- c. Without the prior express written consent of SOS, Seeker agrees that the data received shall not be made available to other persons, firms, corporations, partnerships, members of the public, persons outside the employ of the Seeker or other entities, other than as indicated in the Certified Statement of Use(s) or in accordance with court discovery procedures.
- d. Pursuant to 92 Illinois Administrative Code 1002.60, should Seeker disclose any personal information obtained from SOS in any manner allowed under this Agreement, Seeker shall, for a minimum of five (5) years, keep records identifying each person or entity that received such information and the permitted purpose per the DPPA and the Illinois Vehicle Code (625 ILCS 5/2-123) ("IVC") for which the information was disclosed. Seeker shall make said records available to SOS upon request by SOS.
- e. No person shall be allowed to access SOS's computer system or shall be allowed access to data obtained from SOS's computer system for reasons outside of the Seeker's intended and legitimate use of such information under this Agreement, as identified in the approved Certified Statement of Use(s).
- f. While some of the data contained in such files is considered public information, some of the data to which Seeker is authorized to access to is considered personally identifying information, the dissemination of which is limited by federal and Illinois laws, including the DPPA. Seeker acknowledges that the improper dissemination of personally identifying information is a violation of the DPPA and that any individual who violates the DPPA is subject to criminal prosecution, fines and civil penalties of \$2,500 for each improper disclosure of information. Thus, all information whether displayed on the screen or in printed form is for the **EXCLUSIVE** use of Seeker and shall not be provided to anyone not a Party to this Agreement except as provided in the Certified Statement of Use(s) or in accordance with court discovery procedures. Seeker agrees that each of the employees designated by Seeker who will be granted access to SOS information shall be given a copy of the DPPA describing the limitation on the dissemination of this information and of the civil and criminal penalties for violating the DPPA. Each designated employee shall certify, in writing, compliance with the DPPA. Said Certification and DPPA are attached for Seeker to copy and disseminate to all designated employees who will have access to said confidential information. Signed copies of the Certification shall be returned to: Office of the General Counsel, Illinois Secretary of State, 298 Howlett Building, Springfield, Illinois 62756. Access shall not be granted until all designated employees of Seeker have signed and returned the Certification to the Illinois Secretary of State General Counsel.

- g. All members of the public, must, by law, purchase copies of abstracts for their own use from SOS as outlined in the IVC and 92 Illinois Administrative Code 1002.
- h. Seeker shall adhere to the Data Processing Confidentiality Act. (30 ILCS 585 et. seq.) Seeker agrees not to use, furnish, publish on the internet or otherwise make available drivers, vehicles or title lists or any other data supplied pursuant to this Agreement for commercial solicitation purposes, to contact individuals for advertising, offering for sale, marketing or sale of products or services; or identifying potential employees, except for the United States Armed Forces; or to update, enhance, or verify any information which may then be sold, offered or otherwise distributed to any user to directly or indirectly use such information to contact individuals for advertising, offering for sale, marketing or sale of products or services as set forth by Title 92, Illinois Administrative Code, Chapter II, Section 1002.42. A violation of this provision shall result in SOS's denial of sale of information to the Seeker for a term of five (5) years.
- i. Seeker agrees to properly and timely dispose of the materials containing personal information in a manner that renders the personal information unreadable and undecipherable, in accordance with the PIPA. Furthermore, a violation of the PIPA may subject Seeker to monetary and civil penalties not to exceed \$50,000 for each instance. (815 ILCS 530/40(d)).
- j. Seeker acknowledges that a violation of the PIPA constitutes an unlawful practice under the Consumer Fraud & Deceptive Business Practices Act. (815 ILCS 530/20).
- k. Should Seeker misuse SOS information or have a breach of its security systems that allows unauthorized users access to SOS information, Seeker shall be responsible for any and all damages, remedial measures, expenses, and notification costs, including but not limited to credit monitoring, associated with the unauthorized access and/or breach.
- l. Seeker shall be responsible for all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, relating to the unauthorized access to and/or release or misuse due to 1) the acts or omissions of Seeker, its employees, or agents and/or 2) a breach of the data and/or of its computer security systems that compromises the security of SOS information. Both shall result in SOS having to notify its customers of the misuse or compromise of their information and Seeker shall bear all notification costs, expenses, damages, liabilities, demands and remedial measures, including but not limited to credit monitoring, associated with said breach.
- m. Breach of any of these provisions contained within this section by Seeker shall be deemed a material breach of this Agreement and shall result in the immediate termination of this Agreement.

6. FORCE MAJEURE:

Seeker acknowledges that SOS agrees to provide computer accessible stored data to Seeker as an accommodation to Seeker. SOS shall not be responsible for any failure to deliver data in a timely manner or at all, in the event that SOS suffers a breakdown of its computer stored information facilities, the failure of transmission equipment, fire, floods, earthquakes, explosions, acts of authority exercised by a public functionary, acts of a public enemy, legislation, governmental regulation or other such circumstances which are difficult to foresee and resist, and which impede the ability of SOS to provide the services described in this Agreement, which shall be known as

force majeure. SOS will notify Seeker of an event of force majeure that may delay or preclude provision of the data contemplated under this Agreement, and will notify Seeker when such force majeure no longer exists or precludes or delays such provision of data. SOS will refund any payment made by Seeker for undelivered data; however, SOS shall have no further responsibility or liability to Seeker with respect to such undelivered data.

7. GOVERNING LAW AND JURISDICTION:

This Agreement is subject to the rules outlined in 92 Illinois Administrative Code 1002, and 1030.140, all relevant sections of the Illinois Vehicle Code (625 ILCS 5), the Personal Information Protection Act (815 ILCS 530), the Data Processing Confidentiality Act (30 ILCS 585), the Consumer Fraud & Deceptive Business Practices Act. (815 ILCS 530/20) and all federal laws, including the Federal Driver's Privacy Protection Act (18 USC 2721 et seq.) and the Fair Credit Reporting Act (15 USC 1681 et seq.; and 14 Ill. Adm. Code 180.14. This Agreement shall be interpreted in accordance with the laws of the State of Illinois, U.S.A. Seeker agrees that any dispute arising under this Agreement which cannot be resolved amicably among the parties shall be submitted to the court of competent jurisdiction in the State of Illinois, to which jurisdiction Seeker hereby submits.

8. TERM AND TERMINATION:

- a. Term. The effective date of this Agreement shall be the date set out at the end hereof. This Agreement shall continue in effect until termination by either Party pursuant to the terms hereof, or until the breach of any of the terms and conditions of this Agreement, and in particular Sections 3. Computer Security, 4. Data Mining Prohibitions and 5. Use of Information or by three (3) years from the effective date set out at the end hereof, whichever comes first.
- b. Termination on notice. The Parties shall each have the right to terminate this Agreement without cause upon five (5) days' prior written notice to the other Party.
- c. Additional basis for termination. SOS shall have the right to terminate this Agreement immediately if, at any time, Seeker shall breach any material provision of this Agreement.
- d. Survival of terms. All provisions of this Agreement that are reasonably intended to have effect after termination or expiration of this Agreement, including, without limitation, compliance, audit rights, privacy, data protection, confidentiality, dispute resolution and limitation of liability, including but not limited to the terms and conditions of Sections 2. Computer Equipment, 3. Computer Security, 4. Data Mining Prohibitions, 5. Use of Information, and 7. Governing Law and Jurisdiction and this paragraph are substantive provisions constituting the essence of the Agreement and the obligations of the Parties and shall survive such termination or expiration.

9. NOTICE:

For a notice or other communication under this Agreement to be valid, it must be in writing and delivered via a national transportation company (with all fees prepaid), email, facsimile, or registered or certified mail, return receipt requested and postage prepaid. Any notice or other communication to a Party under this Agreement must be addressed using the information specified below for that Party. The Parties must maintain their current addresses, phone numbers, facsimile phone numbers, and email addresses with each other. If a Party's below information changes, that Party must notify the other Party as soon as possible.

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SOS:

SANGAMON COUNTY, OFFICE OF THE CLERK OF
THE CIRCUIT COURT

Irene Lyons, General Counsel
Illinois Secretary of State
100 W. Randolph Street, #5-400
Chicago, Illinois 60601
Phone: 312-814-8430
Facsimile: 312-814-5958
ilyons@ilsos.gov

David B. Durall
Chief Deputy Clerk
200 South 9th Street
Springfield, Illinois 62705
Phone: 217-535-3163
Facsimile: 217-747-5108
Dave.Durall@co.sangamon.il.us

10. GENERAL:

- a. **Integrated Agreement.** This Agreement constitutes the final Agreement between the Parties concerning online access by Seeker to the Computer Stored Information of the SOS and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the Parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the Parties' respective successors.
- b. **Assignment.** Seeker shall not assign any right or obligation hereunder. Any attempted assignment in violation of this provision shall be void and of no effect.
- c. **Implementation.** Seeker agrees to execute such further documents and take such further steps as SOS reasonably determines may be necessary or desirable to effectuate the purposes of this Agreement.
- d. **Compliance.** Seeker shall comply with all applicable laws, rules, ordinances, guidelines, consent decrees and regulations of any federal, state, or other governmental authority.
- e. **Waiver.** No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon a Party hereto, unless made in writing and duly signed by both Parties. A failure of or delay by either Party to this Agreement to enforce at any time any of the provisions of this Agreement or to require at any time performance of any of the provisions of this Agreement shall in no way be construed to be a waiver of such provision. A waiver by either Party of any of the terms and conditions of this Agreement in any individual instance shall not be deemed a waiver of such terms or conditions in the future, or of any subsequent breach of this agreement.
- f. **Severability.** If any provision(s) or clause(s) of this Agreement, or portion thereof, are held by any court or other tribunal of competent jurisdiction to be illegal, void or unenforceable in such jurisdiction, such provision(s) or clause(s) shall be reformed to approximate as nearly as possible the intent of the Parties, and the remainder of the provisions shall not thereby be affected and shall be given full effect without regard to the invalid portion, and to this end such provisions are declared to be severable.
- g. **Headings.** The descriptive headings of the Sections of this Agreement are inserted for convenience only, and do not constitute a part of this Agreement.
- h. **Counterparts.** This Agreement may be executed by hard-copy signature and in any number of counterparts, each of which shall be deemed to be one and the same instrument. The exchange of executed copies of this Agreement by scanner/email or

other electronic transmission will constitute effective delivery of this Agreement for all purposes.

- i. Fiscal planning. The continuation of this contract and the obligations of the State are contingent upon the appropriation by the legislature or federal funding source of sufficient and appropriate funds to fulfill the requirements of the Agreement. If sufficient funds as determined by the Secretary of the State of Illinois are not appropriated, the Agreement shall terminate on the first date in any fiscal year on which sufficient funds are no longer available. The State will give thirty (30) days or as much notice as possible of an appropriation issue.
- j. Felony Conviction/Criminal Background Check. Seeker certifies that neither Seeker nor any employee or officer of Seeker has been convicted of a felony, or, if so convicted, at least five (5) years have passed since completion of sentence as of the effective date of this Agreement. (30 ILCS 500/50-10).

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates attested to below:

DATE: _____

SANGAMON COUNTY
OFFICE OF THE CLERK OF THE CIRCUIT COURT

By: _____

Paul Palazzolo
Clerk of the Circuit Court

DATE: _____

STATE OF ILLINOIS
SECRETARY OF STATE

By: _____

Kevin Duesterhaus
Director, Driver Services Department

DATE: _____

STATE OF ILLINOIS
SECRETARY OF STATE

By: _____

Carrie Leitner
Executive V, Vehicle Services Department

DATE: _____

STATE OF ILLINOIS
SECRETARY OF STATE

By: _____

JESSE WHITE
SECRETARY OF STATE

Reviewed for Legal Sufficiency:

DATE: _____

STATE OF ILLINOIS
SECRETARY OF STATE

By: _____

Irene Lyons
General Counsel
Illinois Secretary of State's Office

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Approved by the _____ Courts _____ Committee May 6, 2021

Todd Smith ^{ACTING}
Chairman

Chairman, Sangamon County Board

ATTEST:

County Clerk

RECEIVED
2660

MAY 4 2021

Andy Goleman
SANGAMON COUNTY AUDITOR