



Background Investigations

SUBSCRIBER AGREEMENT

THIS Agreement is made and entered into, effective as of _____, 20____, by and between Pretrax, Inc., an Ohio corporation (“Pretrax”), with its principal offices at 10 Center Street, Chagrin Falls, Ohio 44022, and _____

_____ (“Subscriber”), with its principal offices at _____.

The parties agree as follows:

1. **SERVICE PROVIDED:** Pretrax 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”), including but not limited to, civil and criminal records, driver and motor vehicle records, credit records, education and credential verification, workers’ compensation claim history and other background information. Subject to the terms and conditions of this Agreement, Pretrax agrees to furnish to Subscriber upon Subscriber’s request Screening Reports in connection with any background screening of job applicants, employees or tenants (the “Applicant”). Pretrax will use reasonable efforts to deliver the Screening Reports requested in a timely manner; however, Pretrax shall have no obligation or liability to Subscriber for any delay or failure to deliver timely any Screening Reports where such delay or failure is caused, in whole or part, by the delay or failure of a third party to provide data or information to Pretrax, or by any other reason, event or circumstance which is not reasonably within the control of Pretrax.

2. **CONFIDENTIALITY:** Subscriber acknowledges and understands its obligation to maintain the confidentiality and integrity of any information provided by Pretrax to Subscriber, in a Screening Report or otherwise, including Subscriber identification numbers and passwords requested or received from or through Pretrax.

3. **SUBSCRIBER’S ACKNOWLEDGEMENTS, REPRESENTATIONS, WARRANTIES AND OBLIGATIONS:** Subscriber understands and acknowledges that FCRA governs the activities of consumer reporting agencies, as well as the users of the information procured from these agencies and that, among other things, FCRA prohibits employers and property owners and their agents from obtaining Screening Reports unless the employer or property owner, as the case may be, and their agents discloses to the Applicant, in writing, that such a report may be acquired, and obtains the written authorization of the Applicant to inquire into this back ground information. FCRA also requires employers to take additional steps when they make an employment decision based in whole or part on the background information. These steps are intended to give the Applicant the opportunity to dispute any information contained in the background or consumer report. Pretrax urges Subscriber to review the restrictions and requirements of FCRA (Public Law 91-508, Title 15, U.S.C. Sections 1681, *et seq.*).

Subscriber represents, warrants and agrees that it shall 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. Among other things, Subscriber understands and agrees that each time

it requests a Screening Report from Pretrax, Subscriber is representing and warranting to Pretrax that it has and will, with regard to the particular Applicant concerned, comply with Subscriber's obligations under FCRA, including but not limited to, Section 606(a)(2). Subscriber agrees that it will assume responsibility for the final verification of the Applicant's identity, and will base all hiring decisions and actions on its own policies and procedures, and Subscriber acknowledges that Pretrax and its employees will not render any opinions regarding the Screening Reports.

Subscriber acknowledges and agrees that title, ownership and intellectual property rights in and to the Pretrax system of products and services shall remain in Pretrax 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 or copyright law. If legal advice is required by Subscriber, Subscriber understands and acknowledges that Pretrax is not acting as legal counsel to Subscriber and that all such matters discussed will be reviewed and approved by Subscriber's legal counsel prior to any actions taken by Subscriber.

4. MOTOR VEHICLE RECORDS INFORMATION: If motor vehicle records ("MVR") are requested to be included in the Screening Report with respect to any Applicant, Subscriber agrees that it:

- (a) shall use the MVR only for "employment purposes" as contemplated by the FCRA and any applicable state law;
- (b) will comply with all applicable federal and state laws related to the use and review of MVRs, including the Driver's Privacy Protection Act (18 U.S.C. Section 2721 *et seq.*);
- (c) will not use the MVR to build its own database or copy or otherwise reproduce the MVR except in connection with the review of the Applicant; and
- (d) will not sell, distribute or disseminate the MVR, in whole or in part, to any third party and shall use the MVR solely as an end user.

Subscriber further agrees that it will execute such other forms or documents as may reasonably be required to obtain MVRs, including but not limited to, state-specific MVR forms.

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

- (a) comply with all Federal, state and local laws and regulations, including the FCRA, DOT, HIPAA and other applicable laws and regulations, with respect to the request for drug screening services provided by Pretrax and/or its vendors and the use of the results of such drug screening;
- (b) provide Applicant with chain of custody form and directions to an authorized collection site; and
- (c) enter all requests for Drug Screening into the Pretrax system prior to specimen collection.

Subscriber further agrees that it will execute and comply with the terms and conditions of such other forms or documents as Pretrax may reasonably require in connection with providing drug testing as part of the Screening Report.

6. **TENANT SCREENING SERVICES:** Customer hereby expressly acknowledges and agrees that the use of Pretrax services for tenant screening purposes is also subject to the following provisions:

- (a) prior to taking any adverse action, based in whole or in part upon the Screening Report, Subscriber will provide to the Applicant a copy of the Screening Report and a summary of the applicant's rights as prescribed by the Federal Trade Commission; and
- (b) the Screening Report will not be used in violation of any applicable federal or state law or regulation, including those specifically governing equal housing opportunities; and
- (c) precautions necessary to secure any system used to access consumer credit information through the Pretrax services will be taken pursuant to the terms contained herein.

7. **PAYMENT OBLIGATIONS:** Subscriber agrees to pay to Pretrax the applicable charges for the various services rendered to Subscriber hereunder, in accordance with the Schedule of Fees attached hereto. Pretrax's payment terms are net thirty (30) days. If any payment due hereunder is not received by Pretrax within thirty (30) days after the date of Pretrax's billing statement, Pretrax may charge interest at the rate of one and a half percent (1 ½%) per month, or require future payment(s) by Subscriber in advance, or both.

8. **PRETRAX'S OBLIGATIONS:** Pretrax 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, FCRA;
- (b) re-verify at no cost any disputed report when either the Subscriber or the Applicant makes a written request in accordance with applicable law; and
- (c) Maintain Screening Report information and transaction details for a minimum of three (3) years and, upon written request by an Applicant, inform the Applicant of the substance of the report and information contained in the Screening Report delivered to Subscriber.

9. **LIMITATION OF LIABILITY:** The Screening Report prepared by Pretrax is derived from databases and records that have been created and maintained by various government agencies, private companies, and other contributors that are not under the control of Pretrax; accordingly, responsibility for the accuracy of the information contained in the Screening Report and these databases and records rests solely in the contributor. **PRETRAX MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING THOSE OF MARKETABILITY OR FITNESS FOR ANY PURPOSE, RELATING OR PERTAINING TO GOODS SOLD OR SERVICES PERFORMED HEREUNDER. NO AFFIRMATION OF PRETRAX, BY WORDS OR ACTIONS, SHALL CONSTITUTE A WARRANTY.** Pretrax and Subscriber agree that Pretrax's total liability to Subscriber shall be limited to the return of the fees paid to Pretrax for the Screening Report and then only to the extent that the information contained in the Screening Report is found to be the primary basis upon which Subscriber incurred injury or damage resulting from the furnishing of the Screening Report by Pretrax. Pretrax and Subscriber agree that Pretrax shall not be liable to Subscriber for any other damages, costs or expenses whatsoever except as expressly agreed to above. In no event shall Pretrax be liable for incidental or consequential damages arising out of or in connection with this Agreement or the provision of services or the sale of goods to Subscriber. Consequential damages for purposes hereof shall include without limitation, loss of use, income or profit, or losses sustained as the result of injury to any person, or loss of or damage to any property or damages or losses resulting from claims of other persons against Subscriber.

10. INDEMNIFICATION: (a) Subscriber shall indemnify, defend and hold PreTrax 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 PreTrax 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 or other applicable laws in connection with the procurement or use of the Screening Report. (b) PreTrax shall indemnify, defend and hold Subscriber 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 Subscriber to a third party, based upon the gross negligence or intentional wrongdoing by PreTrax in preparing and transmitting the Screening Report.

11. CONFIDENTIAL INFORMATION: Subscriber agrees to treat as confidential, and not disclose without the prior written consent of Pretrax, all information disclosed to it in any matter arising out of or relating to this Agreement or the business of Pretrax, including but not limited to, sales or pricing information or other information relating to Pretrax or its operations, employees, products or services.

12. 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.

13. 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 Ohio, without regard to conflicts of laws principles. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal courts located in Cuyahoga County, Ohio.

14. 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.

IN WITNESS WHEREOF, Subscriber hereby agrees to the terms of this Agreement as of the date first set forth above.

Subscriber: _____
(Company name)

By: _____
(Signature)

(Print Name)

Its: _____
(Title)