



## SERVICE AGREEMENT

This Service Agreement ("Agreement") is between Embarck Safety LLC, a Florida company ("Embarck Safety"), and City of Doral, on behalf of itself and its officers and employees ("Subscriber"), and is effective ("Effective Date"): (i) on the date of last signature below; or (ii) if this Agreement is electronically executed by Subscriber, upon Embarck Safety's activation of Subscriber's account.

**1. EMBARK SAFETY SERVICES.** Embarck Safety is defined as a "consumer reporting agency" pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. ("FCRA") and applicable state law. The FCRA-regulated screening reports that Embarck Safety furnishes pursuant to this Agreement are defined by the FCRA and applicable state law as "consumer reports" and/or "investigative consumer reports" (collectively, "Screening Reports"). Subject to the terms and conditions of this Agreement, and upon Subscriber's request, Embarck Safety will furnish Screening Reports and the related services described in this Agreement in connection with Subscriber's screening of job applicants, employees and/or other individuals for which Embarck Safety provides information for legally permissible purposes (each, an "Applicant"). Subscriber acknowledges and agrees that Embarck Safety may fulfill its services under this Agreement through its affiliates and subsidiaries, provided, Embarck Safety shall remain solely responsible for its obligations under this Agreement. Embarck Safety relies on the information furnished by third-party information suppliers ("Suppliers") and Embarck Safety clients when preparing Screening Reports. References to "Screening Report(s)" refer to an entire Screening Report as well as any specific information contained in a Screening Report. If Subscriber obtains services from Embarck Safety under this Agreement that fall outside the scope of the FCRA and similar United States laws (collectively, "Non-US Services"), the parties will enter into appropriate addenda setting forth their respective rights and obligations related to such Non-US Services. Except as otherwise established by the laws and regulations governing Non-US Services, all other terms and conditions of this Agreement will apply to the Non-US Services.

### 2. SUBSCRIBER OBLIGATIONS.

(a) Compliance with FCRA and other Applicable Laws. Subscriber shall comply with all local, state, federal, and international laws and regulations (collectively, "Laws") applicable to Subscriber in connection with its procurement and use of Screening Reports and other services provided pursuant to this Agreement. In utilizing Embarck Safety's FCRA-regulated services, Subscriber is considered a "user" of Screening Reports under the FCRA and applicable state law. Subscriber shall comply with its certifications and obligations set forth in Attachment A. Subscriber acknowledges it has received, reviewed and will comply with its obligations in the *Notice to Users of Consumer Reports: Obligations Of Users Under The FCRA* available at: <http://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0111-fair-credit-reporting-act.pdf>. Subscriber acknowledges that if it obtains Non-US Services under this Agreement, Subscriber may have additional or different legal obligations than those described in this section. Subscriber shall comply with all such obligations. Subscriber shall promptly notify Embarck Safety if Subscriber believes it has failed to fulfill any obligation in this Agreement, including, without limitation, those obligations related to confidentiality, consumer privacy, data protection, and compliance with Laws.

(b) Account Access and Maintenance. Subscriber shall designate to Embarck Safety the name of a "Super User(s)" who shall be: (i) Subscriber's main contact(s) for the services obtained under this Agreement, and (ii) responsible for the strict administration and control of Subscriber's account identification numbers and passwords. The Super User(s) shall identify and authorize all Subscriber account users and their respective access privileges, and promptly notify Embarck Safety of any changes of account users and/or if any account identification numbers or passwords become invalid, inactive or compromised in any manner. In accordance with Section 4, a Super User may be an Outsourced Provider.

(c) Data Privacy and Security. Subscriber shall maintain reasonable and appropriate technical, physical, administrative and other organizational precautions and security measures to protect against unauthorized access to and/or misuse of the Embarck Safety system and Screening Reports. At a minimum, Subscriber shall comply with the Information Access & Security Requirements set forth in Attachment A. Embarck Safety may, in its reasonable discretion and without penalty, suspend and, upon written notice, cancel Subscriber's account if Embarck Safety reasonably suspects or identifies any misuse of or unauthorized access to its system and/or Screening Reports through Subscriber's account.

(d) Audits and Record Retention. Embarck Safety and/or its Suppliers or their designated representatives may conduct reasonable periodic audits of Subscriber's compliance with this Agreement. Unless otherwise required by applicable Laws, Subscriber shall maintain copies of all Applicant consent forms and pre-adverse and adverse action notices (as further described in Attachment A) for a minimum period of five (5) years, and Subscriber shall, upon reasonable advance notice, during its normal business hours, make available to Embarck Safety and/or its Suppliers or their designated representatives such documentation reasonably requested to demonstrate Subscriber's compliance with its obligations in this Agreement. If Subscriber becomes aware of an audit initiated by a third-party involving Embarck Safety's services provided pursuant to this Agreement, Subscriber shall provide Embarck Safety prompt written notice of the audit. Unless otherwise required by applicable Laws, Subscriber shall not provide access to its Embarck Safety account to any auditing party unless Embarck Safety consents to such request and an Embarck Safety representative participates in the review/audit.

(e) Prohibition on Resale or Reuse of Reports. Except as otherwise set forth in this Agreement, Subscriber shall not, directly or indirectly, sell, transfer, disclose the contents of or distribute Screening Reports, in whole or in part, to any third-party (other than to the applicable Applicant or in conjunction with a Required Disclosure). Subscriber shall use Screening Reports solely as an end-user, for a single, one-time use.

(f) Compliance; No Legal Advice. Subscriber acknowledges that Embarck Safety will not render any opinions regarding Screening Report content, and Subscriber shall base its screening processes, guidelines and decisions on its own policies and procedures. Any consultation, training and forms provided by Embarck Safety are provided for informational purposes only, and not for the purpose of providing legal advice. EMBARK SAFETY STRONGLY RECOMMENDS THAT SUBSCRIBER CONSULT WITH ITS OWN LEGAL COUNSEL FAMILIAR WITH SUBSCRIBER'S UNIQUE REQUIREMENTS AND LEGAL/REGULATORY OBLIGATIONS RELATED TO THE COMPLIANT PROCUREMENT AND USE OF SCREENING REPORTS AND OTHER SERVICES OBTAINED PURSUANT TO THIS AGREEMENT.

### 3. EMBARK SAFETY OBLIGATIONS.

(a) Compliance with FCRA and Other Applicable Laws. Embarck Safety shall comply with all Laws applicable to Embarck Safety in its preparation and transmission of Screening Reports and other services provided pursuant to this Agreement. Embarck Safety acknowledges that if it provides Non-US Services under this Agreement, Embarck Safety may have additional or different legal obligations than those described in this section. Embarck Safety shall comply with all such obligations.

(b) Service Performance. Upon Subscriber's request, Embarck Safety shall, in accordance with the terms of this Agreement, perform the services identified in the Schedule of Fees attached hereto as Attachment B ("Schedule of Fees").

(c) Data Privacy and Security. Embarck Safety shall implement commercially reasonable and appropriate technical, physical and administrative measures to protect Applicant data against Embarck Safety's accidental or unlawful destruction and unauthorized disclosure or access. Embarck Safety is not responsible for disclosure or compromise of such data due to Subscriber's acts or omissions or otherwise resulting from use of Subscriber's passwords or accounts, due to no fault of Embarck Safety.

(d) Report Maintenance. Subject to Section 13(b), during the Term of this Agreement, Embarck Safety shall maintain Screening Report information for a minimum of five (5) years, unless otherwise required or prohibited by applicable Laws.

(e) Management Reports. Embarck Safety shall provide Subscriber with Embarck Safety's standard "Management Reports" functionality to enable Subscriber to generate available reports relating to Subscriber's account activity.

(f) Service Standards; Disclaimer of Warranty. EMBARK SAFETY'S SERVICES WILL BE PERFORMED IN A PROFESSIONAL MANNER IN ACCORDANCE WITH INDUSTRY STANDARDS. EMBARK SAFETY WILL MAINTAIN AND FOLLOW REASONABLE PROCEDURES TO ASSURE THE MAXIMUM POSSIBLE ACCURACY OF THE INFORMATION CONTAINED IN EACH SCREENING REPORT, AND EMBARK SAFETY WILL RE-VERIFY ANY DISPUTED SCREENING REPORT IN ACCORDANCE WITH APPLICABLE LAWS. SUBSCRIBER ACKNOWLEDGES THAT EMBARK SAFETY IS NOT AN INSURER OR GUARANTOR OF THE ACCURACY, RELIABILITY, VALIDITY, DEPTH OR COMPLETENESS OF THE INFORMATION PROVIDED BECAUSE SUCH INFORMATION IS SUBJECT TO HUMAN ERROR AND IS OBTAINED FROM PUBLIC RECORDS AND OTHER THIRD-PARTY SOURCES THAT ARE NOT UNDER THE CONTROL OF EMBARK SAFETY AND MAY NOT ALWAYS BE ACCURATE, CONSISTENT, VALID OR COMPLETE. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, EMBARK SAFETY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY ARISING FROM THE COURSE OF DEALING, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND NONINTERRUPTION OF SYSTEM USE.

**4. OUTSOURCED PROVIDER.** This Section 4 is only applicable if Subscriber obtains Embark Safety's Outsourced Provider services, as outlined below. If Subscriber uses an outsourced human resources provider ("Outsourced Provider") which, for the purposes of this Agreement, shall be acting as an authorized agent of Subscriber in connection with Subscriber's permissible use of Embark Safety's Screening Reports and other services, Subscriber shall require, by written agreement, its Outsourced Provider to comply with all terms of this Agreement applicable to Subscriber (including, without limitation, compliance with all Laws with respect to the access, retention, destruction and use of Screening Reports; protection of the confidentiality of Embark Safety's Confidential Information; and prohibition against re-using, transferring (other than to Subscriber or Applicant) and/or reselling Screening Reports). As between Subscriber and Embark Safety, Subscriber agrees that it shall be fully responsible for the actions or inactions of its Outsourced Provider and that any violation by its Outsourced Provider of the terms of this Agreement shall be considered a violation of this Agreement by Subscriber. Subscriber authorizes Embark Safety to deal directly with the Outsourced Provider as Subscriber's authorized agent, and as between Subscriber and Embark Safety, Subscriber shall be responsible for ensuring that all necessary consents of the Applicants have been obtained to permit Embark Safety to disclose their Screening Reports to the Outsourced Provider. The Outsourced Provider shall perform its services onsite at Subscriber's place of business. If the Outsourced Provider wishes to perform its services for Subscriber and/or access or retain Applicant Screening Reports at the Outsourced Provider's own business premises, Subscriber shall notify Embark Safety in advance, and Embark Safety shall have the right, at Subscriber's cost of \$150, to perform for regulatory compliance purposes Embark Safety's standard company credentialing procedures with respect to Outsourced Provider, which may include a brief physical inspection of the Outsourced Provider's business premises. Subscriber agrees to obtain Embark Safety's advance consent (not to be unreasonably withheld) of any replacement of its Outsourced Provider. Subscriber acknowledges that, due to statutory and/or contractual obligations and restrictions, some Embark Safety services may not be available through an Outsourced Provider relationship and, of those that are available, some may require additional paperwork from Subscriber and/or Outsourced Provider.

**5. EXTENDED WORKFORCE SCREENING.** This Section 5 is only applicable if Subscriber obtains Embark Safety's Extended Workforce Screening services, as outlined below. Upon execution by Subscriber's authorized third party vendor(s) (each, a "Vendor") of Embark Safety's standard "Extended Workforce Subscriber Agreement", Embark Safety shall furnish to Vendors, upon their request, Screening Reports with respect to the Vendor's own applicants or employees (each, a "Vendor Applicant") who are being evaluated to provide services on behalf of the Vendor to Subscriber. Subject to the Vendor's consent, and at Subscriber's request, Embark Safety will provide Subscriber with system access to the Vendor Applicant Screening Reports solely for purposes of auditing and, if applicable, adjudicating the results thereof to determine the Vendor Applicant's eligibility to perform contracted services for Subscriber. Subscriber shall not use the Vendor Applicant Screening Reports for any other purpose. Subscriber agrees to comply with all applicable Laws and the terms of this Agreement (including, without limitation, with respect to the access, retention, destruction and use of the Vendor Applicant Screening Reports. Embark Safety advises that Subscriber and Vendor consult to determine if and when an "adverse action" (within the meaning of the FCRA or other applicable Laws) has occurred, and in such event, determine which of those parties shall be responsible for providing the Vendor Applicant with appropriate pre-adverse action and adverse action notifications, as applicable and in accordance with applicable Laws. Embark Safety will configure the Vendor's screening packages in accordance with Subscriber's instructions provided to Embark Safety from time to time. Unless otherwise agreed by the parties in writing, Embark Safety's fees for the Vendor Applicant Screening Reports will correspond to Subscriber's fees set forth in this Agreement, and unless Subscriber has expressly agreed in writing to assume the fees for the Vendor Applicant Screening Reports, Embark Safety will bill the Vendor directly for such services and Subscriber shall not be responsible for such fees. Subscriber's continued system access privileges (if any) to the Vendor Applicant Screening Reports shall cease upon expiration or earlier termination of this Agreement. Subscriber acknowledges that, due to statutory and/or contractual obligations and restrictions, some Embark Safety services may not be available through an Extended Workforce Screening relationship and, of those that are available, some may require additional paperwork from Subscriber and/or Vendor.

**6. MOTOR VEHICLE REPORTS; VERIFICATION SERVICES; PROFESSIONAL SERVICES.**

(a) Motor Vehicle Records. Subscriber acknowledges and agrees that motor vehicle reports ("MVRs") and related information are considered Screening Reports for purposes of this Agreement. If Subscriber requests MVRs or related information from Embark Safety under this Agreement, then Subscriber further represents and agrees that: (i) It 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; (ii) It will comply with all applicable Laws related to the use and review of MVRs, including, without limitation, the Driver's Privacy Protection Act, 18 U.S.C. §2721 et seq. ("DPPA"); (iii) it will not use the MVRs to build its own database; and (iv) it will, from time to time upon Embark Safety's request, execute paperwork required by applicable state Departments of Motor Vehicles and/or other data sources for Subscriber's access to MVRs.

(b) Verification Services. Embark Safety has obtained a limited license to provide to its clients certain "nonpublic personal information" ("Verification Services") as defined in and regulated by the Gramm-Leach-Bliley Act (15 U.S.C. § 6801, et seq.) and related state laws (collectively, "GLBA"). Verification Services include, but are not limited to, data provided for the purpose of verifying information provided by Applicants, such as residential history information. Verification Services do not include consumer credit information or other types of information subject to the permissible purposes set forth in the FCRA. If Subscriber obtains Verification Services from Embark Safety, Subscriber shall comply with the following requirements and restrictions: (i) Subscriber will not, directly or indirectly, sell, transfer, disclose the contents of or distribute Verification Services, in whole or in part, to any third-party (other than to the applicable Applicant), and Subscriber shall use the Verification Services solely as an end-user, for a single, one-time use with respect to an Applicant; (ii) Subscriber's sole purpose for requesting Verification Services will be to verify the accuracy and completeness of information provided to Subscriber by the Applicant in connection with the transaction pursuant to which the Applicant authorized Subscriber to obtain a report regarding the Applicant; (iii) Subscriber will limit its use of Verification Services to the foregoing stated purpose; (iv) Subscriber will take appropriate measures so as to protect against the misuse of the Verification Services; (v) Subscriber will not use any information obtained in connection with the Verification Services, in whole or in part, for the purpose of serving as a factor in determining the Applicant's eligibility for credit, insurance, employment or any other product, service or transaction; and (vi) Subscriber will not use the information provided in connection with the Verification Services for any purpose that would violate the Privacy Rule, 16 CFR Part 313, implemented pursuant to the GLBA, or any other provisions of the GLBA or other applicable law, rule, or regulation.

(c) Professional Services. Unless otherwise expressly stated in Attachment B, Embark Safety's fees in the Schedule of Fees correspond to Embark Safety's standard technology, product and service offerings, and exclude any customized technology development, training, reporting, product features and service levels. Should Subscriber desire (and Embark Safety agree to provide) such customization, the parties shall set forth the corresponding terms and fees in a mutually acceptable written statement of work, addendum or amendment.

**8. AFFILIATE ORDERING RIGHTS.** Upon Embark Safety receiving authorization from Subscriber in a form reasonably acceptable to Embark Safety, Embark Safety will permit an Affiliate of Subscriber to order Embark Safety's services under the same terms and conditions as this Agreement, provided that: (i) the Affiliate is neither an existing customer nor a competitor of Embark Safety, (ii) the Affiliate satisfies Embark Safety's standard account access credentialing requirements, and (iii) the Affiliate executes a mutually acceptable "join-on" agreement, or equivalent, that binds both Embark Safety and the Affiliate to the terms of this Agreement, and includes a compliance certification from Affiliate reasonably acceptable to Embark Safety. For purposes of this provision, "Affiliate" means any entity controlling, controlled by or under common control with Subscriber.

**9. PAYMENT TERMS; FEES.**

(a) Creditworthiness; Right to Assurance. Subscriber agrees that Embark Safety may determine Subscriber's creditworthiness through Embark Safety's review of available data and verification sources, and Embark Safety may establish Subscriber's payment terms under this Agreement based on such review. Subscriber shall provide its most current audited and unaudited financial statements and other relevant financial information to Embark Safety upon request. If, at any time, Subscriber fails to comply with the payment terms of this Agreement, if Subscriber experiences a material adverse change in its financial condition, if Subscriber presents an undue risk of nonpayment in Embark Safety's reasonable opinion, or if Embark Safety has a good faith reason to believe Subscriber does not intend to, or is unable to perform its obligations in this Agreement, Embark Safety may at its option (and in addition to any other remedies available by law or in this Agreement) exercise one or more of the following rights: (i) require a deposit or other form of payment security from Subscriber; (ii) adjust Subscriber's payment terms; (iii) refuse to accept additional orders from Subscriber; and/or (iv) require adequate written assurance of Subscriber's intent to perform.

(b) Payment Terms. Embark Safety shall invoice Subscriber on a monthly basis, and Subscriber shall pay all amounts due within thirty (30) days of receiving the invoice, unless Embark Safety establishes different payment terms pursuant to this Agreement (in which case, Embark Safety will provide written notice to Subscriber of such payment terms). Subscriber shall promptly review each invoice and notify Embark Safety of any alleged errors or disputes on or before the due date of such invoice. Subscriber waives the right to dispute any charges or other invoice details not disputed within such timeframe. If all undisputed amounts due are not received by Embark Safety by the due date, Embark Safety may, in addition to its rights in Section 9(a), upon ten (10) days advance written notice: (i) suspend Subscriber's account until such time as all delinquent payments are received, and/or (ii) charge Subscriber interest on the outstanding balance at a rate that is the lesser of (a) 12% per month, or (b) the highest rate permitted by applicable Laws. Subscriber shall reimburse Embark Safety for any attorneys' fees and reasonable costs incurred by Embark Safety in connection with efforts to collect amounts due from Subscriber under this Agreement.

(c) Fees; Taxes; Revisions. Subscriber shall pay for all services provided pursuant to this Agreement at the rates set forth in the Schedule of Fees. Embark Safety's fees are exclusive of any sales taxes or value added taxes and other similar indirect taxes ("VAT") applicable to the services. If Embark Safety's services are or become subject to sales tax or VAT, then Subscriber shall be responsible for such taxes and, where applicable, Subscriber shall self-account for local VAT via a self-charging or reverse charge mechanism. If Subscriber requests and Embark Safety provides additional services not initially set forth in the Schedule of Fees, such added services will be hereby incorporated into this Agreement at Embark Safety's then-current rates unless otherwise mutually agreed-upon in writing by the parties. Subscriber acknowledges that it will be responsible for charges resulting from its errors in inputting

data, duplicate order entries, and order cancellations initiated after processing has commenced. Subscriber shall pay all pass-through fees, applicable taxes and charges made by Information sources or Suppliers for release of information and records used in compiling Screening Reports. Such pass-through fees, taxes and charges are subject to change without prior notice. Embark Safety may reasonably revise the prices in this Agreement upon thirty (30) days advance notice to Subscriber. In addition, if at any time there are changes in Laws (including, without limitation, any ordinances or other regulatory, administrative or governmental acts or measures) that increase Embark Safety's cost of service or reasonably require additional related services to be provided by Embark Safety, or in Embark Safety's determination restrict its ability to reasonably continue to provide the services in this Agreement, Embark Safety may, upon providing written notice to Subscriber: (i) add a reasonable surcharge or pricing modification to cover the added costs of providing the affected service(s), and/or (ii) modify or cease providing the affected service(s).

(d) Account Deactivation. Subscriber acknowledges and agrees that if Subscriber is determined at any time not to meet Embark Safety's standard client credentialing requirements and Subscriber's account is not activated, or is deactivated as a result, then any prior charges incurred related to Subscriber's account, whether for account setup registration or for pending or completed orders, shall be promptly paid to Embark Safety by Subscriber.

#### 10. CONFIDENTIAL INFORMATION.

(a) Confidential Information Defined. Pursuant to this Agreement, each party ("Disclosing Party") may disclose or make available to the other party ("Receiving Party"), whether orally or in physical form, non-public confidential or proprietary information concerning the Disclosing Party and its business, products and/or services, including, without limitation, its software; systems and technology; product and service specifications, methodologies and strategies; pricing; Screening Reports; invoices; and trade secrets and other intellectual property (collectively, "Confidential Information"). Confidential Information does not include information that: (i) was rightfully in the possession of the Receiving Party prior to disclosure by the Disclosing Party; (ii) was or is independently developed by the Receiving Party without use of the Confidential Information; (iii) is now or hereafter becomes generally available to the public other than as a result of disclosure by the Receiving Party in violation of this Agreement; or (iv) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party and such source is not, to the best of the Receiving Party's knowledge, under any obligation to keep such information confidential.

(b) Duty of Confidentiality. The Receiving Party agrees: (i) to keep confidential and hold in strict confidence the Confidential Information; (ii) to take all reasonable precautions to protect the confidentiality of the Confidential Information (which precautions shall be no less than those employed by the Receiving Party to preserve the confidentiality of its own confidential materials and information); (iii) that it will not, without the prior written consent of the Disclosing Party, or in conjunction with a Required Disclosure, disclose any portion of the Confidential Information to any third-party; (iv) not to copy or reproduce the Confidential Information, except as reasonably required for the purposes contemplated in this Agreement (in which case Receiving Party will ensure that any confidentiality or other proprietary rights notices on the Confidential Information are reproduced on all copies); (v) not to reverse engineer or disassemble any products, technology or tangible objects that utilize or contain such Confidential Information; and (vi) to return and/or destroy all Confidential Information of the Disclosing Party upon request.

(c) Required Disclosures. If the Receiving Party is requested in any judicial or administrative proceeding or by any governmental or regulatory authority (whether by depositions, interrogatories, requests for information or documents, subpoenas, civil investigative demands, or similar processes) or otherwise required by applicable Laws to disclose the Confidential Information (collectively, a "Required Disclosure"), the Receiving Party may make such disclosure, provided it uses reasonable efforts to give prompt written notice, as soon as practicable, to the Disclosing Party of such required disclosure so that Disclosing Party may seek an appropriate protective order. Notwithstanding anything to the contrary above, Embark Safety shall not: (i) be restricted from disclosing to Applicants their Screening Reports and file information in accordance with applicable Laws, (ii) be restricted from disclosing Confidential Information to the extent necessary to perform its obligations under this Agreement, or (iii) be required to destroy, erase or return any Screening Reports or related Applicant data in Embark Safety's files.

11. LIMITATION OF LIABILITY. To the maximum extent permitted by applicable Laws, each party's total liability to the other party pursuant to this Agreement ("Limitation of Liability") shall not exceed three (3) times the fees paid by Subscriber and collected by Embark Safety pursuant to this Agreement within the twelve (12) month period immediately preceding the event(s) giving rise to the claim. Embark Safety's liability shall be further limited to the extent that any Applicant conduct giving rise to the claim, and the damages sustained thereby, are reasonably of the same class as the Screening Report record at issue (e.g., should Embark Safety fail to accurately report a motor vehicle record containing a moving violation, and if the Applicant is subsequently terminated by Subscriber for poor performance in a non-driving capacity, such performance would not be conduct of the same class as the moving violation). IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Embark Safety and Subscriber shall each use good faith reasonable efforts to mitigate any potential damages or other adverse consequences arising from or related to this Agreement.

12. INDEMNIFICATION. Each party ("Indemnifying Party") shall indemnify, defend and hold the other party ("Indemnified Party") harmless from and against any third-party claims, demands, suits, judgments, costs, expenses and liabilities, including, without limitation, reasonable attorneys' fees (collectively, "Claims"), to the extent caused by the Indemnifying Party's failure to comply with the FCRA or other applicable Laws. With respect to Embark Safety's liability for any Applicant Claim alleging inaccurate or incomplete Screening Report information, Subscriber shall, prior to having taken any action adverse to the Applicant based on the Screening Report, have provided Embark Safety a reasonable opportunity to reinvestigate the disputed information in accordance with Embark Safety's FCRA-imposed re-investigation obligations and deadlines. If Subscriber engages Embark Safety to perform professional reference checks, Subscriber further agrees to defend, indemnify and hold Embark Safety harmless from and against all Claims with respect to the content of reference questions that have been customized at Subscriber's request and the content of the reference's responses accurately reported by Embark Safety as received from the reference. Each party's total aggregate liability under this Section 12 shall not exceed the Limitation of Liability applicable to such party as set forth in Section 11. Procedure. An Indemnified Party seeking indemnification pursuant to this Agreement shall provide the Indemnifying Party with prompt written notice of a Claim and shall cooperate with the Indemnifying Party in good faith and in all reasonable respects in connection with the defense of any such action at the expense of the Indemnifying Party. The Indemnified Party may, at its option, participate in the defense of any such Claim, with its separate counsel and at its own cost, and the Indemnifying Party agrees to cooperate in good faith and in all reasonable respects with such counsel; provided, however, that the Indemnifying Party shall have sole control of the defense and any settlement of such Claim or action, and the Indemnified Party shall not compromise or settle any such Claim without the prior written consent of the Indemnifying Party. The Indemnifying Party shall not without the consent of the Indemnified Party (such consent not to be unreasonably withheld, conditioned or delayed), enter into any settlement that requires a finding or admission of fault of the Indemnified Party, or reasonably can be expected to require a material affirmative obligation of, result in any ongoing material liability to, or otherwise prejudice the Indemnified Party.

#### 13. TERM; TERMINATION.

(a) Term. The term of this Agreement ("Term") commences on the Effective Date and, unless otherwise terminated pursuant to this Section 13, will continue in force for an initial period of two (2) years, and thereafter will automatically renew for successive periods of one (1) year each. Either party may terminate this Agreement at any time: (i) for convenience, upon delivery of sixty (60) days advance written notice, or (ii) for cause, in accordance with Section 13(b). If services are provided following termination or expiration of this Agreement, all terms and conditions of this Agreement shall apply to such services.

(b) Termination; Suspension. If either party: (i) defaults in the performance of its material obligations in this Agreement and fails to substantially cure such default within thirty (30) days after receipt of a written notice of breach, or (ii) becomes the subject of any proceeding commenced under the United States Bankruptcy Code, or executes an assignment for the benefit of creditors or files for relief under any applicable reorganization, moratorium or similar debtor relief Laws, then the other party may terminate this Agreement upon delivery of written notice. Additionally, Embark Safety may suspend performance under this Agreement without penalty upon written notice to Subscriber if Subscriber's breach of this Agreement is reasonably determined by Embark Safety to be a violation of Law or to present a risk of non-compliance by Embark Safety with applicable legal or contractual obligations. Following the expiration or termination of this Agreement, Embark Safety will provide Subscriber with a reasonable opportunity to: (i) download for its records copies of all its Applicant Screening Reports, and/or (ii) obtain from Embark Safety, at Embark Safety's then-current fee, a CD or similar format containing copies of Subscriber's Applicant Screening Reports. Thereafter, Embark Safety shall have no further duty to maintain copies of Applicant Screening Reports for access by Subscriber.

#### 14. OWNERSHIP AND ACCESS TO RECORDS AND AUDITS.

In order to comply with public records laws, Vendor shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- (b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

The City Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the Vendor involving transactions related to this Agreement.

The City may cancel this Agreement for refusal by the Vendor to allow access by the City Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

**15. TRUTH IN NEGOTIATING CERTIFICATE.** Vendor hereby certifies, covenants, and warrants that wage rates and other factual unit costs supporting the compensation for the Services that may be offered pursuant to this Agreement are accurate, complete, and current. Vendor further agrees that the Fee provided shall be adjusted to exclude any significant sums by which the City determines the agreement price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such agreement adjustments shall be made within one (1) year following the end of the Term or any Extension term.

**16. PROHIBITION OF CONTINGENCY FEES.** Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Vendor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

**17. NON-COLLUSION.** Vendor certifies that it has not divulged, discussed or compared his/her/its quote with other individuals and/or entities that provided quotes to the City for the Services and has not colluded with any other individual or entity whatsoever.

**18. NOTICES.** Any notices regarding this Agreement: (i) must be in writing, (ii) must be delivered (a) by facsimile (with transmission confirmed), (b) in person, (c) by certified mail, return receipt requested, postage pre-paid, or (d) by a nationally recognized overnight delivery service; (iii) must be delivered to the applicable party at the address set forth below in this section, or such other address as a party may designate by notice in accordance with this section; and (iv) will be deemed given on the date of delivery.

**If to Embark Safety:**

Embark Safety  
3267 Progress Drive  
Suite 106  
Orlando, FL 32826  
Fax: (877) 347-7745

**If to Subscriber:**

<b>COMPANY NAME (LEGAL ENTITY NAME):</b>	<b>City of Doral</b>
<b>CONTACT NAME:</b>	<b>Francisco Rios</b>
<b>ADDRESS:</b>	<b>8401 Northwest 53 Terrace</b>
<b>CITY, STATE, ZIP CODE:</b>	<b>Doral, FL 33166</b>

**15. LEGAL SUPPORT SERVICES.** If Embark Safety (including any of its affiliates and subsidiaries) assists Subscriber or is otherwise required to participate in preparation for, defense of, or responding to any legal or regulatory proceedings involving or relating to Subscriber, including, without limitation, subpoenas, depositions, hearings and trials (collectively, "Legal Support Services"), Subscriber shall reimburse Embark Safety for all costs and expenses Embark Safety reasonably incurs in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements. Except to the extent required by law, Embark Safety is under no obligation to provide Legal Support Services to Subscriber and will evaluate such matters on a case by case basis.

**16. MISCELLANEOUS.**

(a) Entire Agreement; No Third-Party Beneficiaries. This Agreement (including, without limitation, Subscriber's Embark Safety application paperwork and all attachments hereto, which are hereby incorporated by reference and included in the definition of "Agreement") sets forth the entire agreement between the parties with respect to the subject matter hereof, supersedes any prior or contemporaneous written or verbal discussions, and is not intended to confer any rights, remedies or claims to any third-party. This Agreement may not be modified by any purchase order or similar order forms received from Subscriber, even if Embark Safety has accepted or acknowledged receipt of such forms.

(b) Amendment. This Agreement may be modified only by a writing executed by an authorized representative of both parties; provided, however, that any updates to the Schedule of Fees made from time to time during the Term shall be effective upon the written authorization of Subscriber's "Super User" or other designee.

(c) Waiver. The failure of either party at any time to enforce its rights in this Agreement shall not be construed as a waiver of such rights.

(d) Severability; Interpretation. If any provision of this Agreement, in whole or in part, is determined to be illegal, unenforceable, or invalid, such provision shall be deleted from this Agreement and shall not affect the legality, enforceability or validity of the remainder of this Agreement. This Agreement shall be considered drafted mutually by the parties.

(e) Assignment. Neither party shall assign this Agreement without the prior written consent of the other party; provided, however, that Embark Safety shall have the right to assign or otherwise transfer this Agreement in connection with a merger, acquisition, corporate reorganization, public stock offering, or sale of all or substantially all of its assets. The foregoing limitation on Subscriber's ability to assign this Agreement is due, in part, to Embark Safety's regulatory obligations and related customer credentialing procedures and requirements.

(f) Remedies Cumulative. Subject to the Limitation of Liability in Section 11, all remedies available to either party related to this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

(g) Force Majeure. The obligations of either party to perform under this Agreement (other than payment obligations) shall be excused during a reasonable period of delay caused by matters beyond such party's reasonable control, including, without limitation, changes in Laws, closure or unavailability of universities, courthouse or other data sources, power or internet service failure, third-party system or service integration failure, war, and earthquake, fire, flood or other natural disaster.

(h) Survival. All provisions of this Agreement that by their nature are reasonably intended to have effect after termination of this Agreement (including, without limitation, compliance, audit rights, privacy, data protection, confidentiality, dispute resolution, indemnity and limitation of liability) shall survive such termination.

(i) Governing Law; Venue; Dispute Resolution. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without regard to the principles of conflicts of laws. In the event of any dispute between the parties related to this Agreement, if the parties are unable to resolve the dispute after holding good faith and confidential discussions, then the dispute shall be submitted to, and determined exclusively by, binding arbitration conducted in Orange County, Florida, pursuant to the rules and procedures of Judicial Arbitration and Mediation Services (JAMS). The parties agree that the arbitration proceedings, communications and any resulting decisions/awards shall be treated as confidential unless otherwise required by applicable Laws. Notwithstanding the foregoing, each party shall be entitled to seek immediate injunctive relief to protect its Confidential Information.

(j) Independent Contractors; Title. The parties will perform their obligations in this Agreement as independent contractors. Nothing contained in this Agreement shall be deemed to create any association, partnership, joint venture, or relationship of principal and agent between the parties. Subscriber acknowledges that all title, ownership and intellectual property rights of the Embark Safety system, products and services, including, without limitation, all work performed under any statement of work by Embark Safety in its performance of services, and all documentation relating thereto, shall remain the property of Embark Safety and/or its licensors or Suppliers, as applicable. Subscriber further acknowledges that Embark Safety is an aggregator of third-party data and information and that all content contained in any Screening Report is the property of the applicable content owner and may be protected by applicable contract, copyright and related Laws. Subject to applicable Laws, Subscriber shall retain the perpetual right to maintain its copies of Screening Reports in accordance with this Agreement.

(k) Counterparts; Validity of Facsimile and Scanned Signatures. This Agreement may be executed by electronic or 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 facsimile, scanner/email or other electronic transmission will constitute effective execution and delivery of this Agreement for all purposes. Signatures of the parties transmitted by such methods will be treated in all respects as having the same effect as an original signature.

(I) Signature Authority. Each party represents that this Agreement has been executed on its behalf by a representative authorized to bind such party with respect to the undertakings and obligations contained in this Agreement.

AGREED:

Subscriber:

COMPANY NAME (LEGAL ENTITY NAME):	City of Doral
CONTACT NAME:	Edward Rojas
TITLE:	City Manager
DATE:	November 9, 2015
AUTHORIZED SIGNATURE:	X <i>(Edwin Sosa)</i>

**Embark Safety**

Name: Edwin Sosa

Title: General Manager, Authorized member

Date: November 9, 2015

Authorized Signature: *Edwin Sosa*

Approved as to form and legal sufficiency  
for the sole use of the City of Doral.

*D.A. Espino-Weiss*  
City Attorney

Daniel A. Espino-Weiss  
Print Name

## Attachment A

### Compliance Certification; Information Access & Security Requirements

#### 1. Subscriber Compliance Certification

Subscriber certifies to Embark Safety as follows with respect to each FCRA-regulated Screening Report Subscriber orders and/or receives:

1. **Permissible Purpose.** Subscriber shall procure and use Screening Reports only for the legally permissible purposes set forth in the Agreement.
2. **Applicant Disclosure and Consent.** Subscriber will ensure that prior to its procurement of a Screening Report for *employment purposes*: (i) Subscriber has made a clear and conspicuous disclosure in writing to the Applicant, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes (and for California Applicants, the disclosure shall also include the name, address and telephone number of Embark Safety, the nature and scope of the investigation requested, a summary of the provisions of Ca. Civil Code §1786.22, and otherwise comply with Ca. Civil Code §1786.16); and (ii) the Applicant has authorized in writing the procurement of the Screening Report by Subscriber (and for CA, OK and MN Applicants, Subscriber shall provide the Applicant, by means of a check box, an option by which the Applicant may indicate on their written consent form that the Applicant wishes to receive a copy of any Screening Report that is prepared).
3. **Pre-Adverse Action Disclosures.** In using a Screening Report for *employment purposes*, before taking any adverse action based in whole or in part on the Screening Report, Subscriber shall provide to the Applicant to whom the Screening Report relates: (i) a copy of the Screening Report; and (ii) a description in writing of the rights of the Applicant under the FCRA, as prescribed by the Federal Trade Commission under FCRA §609(c)(3) ("Summary of Consumer Rights"), and any other notices required by applicable Laws.
4. **Adverse Action Disclosures.** After providing the Applicant with the pre-adverse action disclosure described in paragraph 3 above, and after Subscriber has given the Applicant reasonable time to dispute the information contained in their Screening Report, Subscriber will, if intending to take adverse action with respect to the Applicant based in whole or in part on information contained in the Screening Report, send the Applicant a follow-up notification that the Subscriber is taking adverse action (e.g., denying employment or promotion) based in whole or in part on the information contained in the Screening Report.
5. **EEO Compliance.** The information from the Screening Report will not be used in violation of any applicable federal or state equal employment opportunity law or regulation.
6. **Investigative Consumer Reports.** For each Investigative Consumer Report, as defined by the FCRA (e.g., professional reference check), that Subscriber procures from Embark Safety, Subscriber has complied with its obligations under FCRA §606(a) and (b), including, without limitation, the following: a) clearly and accurately disclosing to the Applicant that an Investigative Consumer Report including information as to the Applicant's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure: i) is made in writing mailed, or otherwise delivered, to the Applicant not later than three days after the date on which the report was first requested; and ii) includes a statement informing the Applicant of his right to request the additional disclosures provided for under FCRA §606(b) as set forth in (b.) below, and a written Summary of Consumer Rights; and b) upon written request made by the Applicant within a reasonable period of time after the receipt by him of the disclosure required. Subscriber will make a complete and accurate disclosure of the nature and scope of the investigation requested. The disclosure will be made in a writing mailed, or otherwise delivered, to the Applicant not later than five days after the date on which the request for such disclosure was received from the Applicant or such report was first requested, whichever is the later.

#### 2. Information Access & Security Requirements

1. Subscriber shall protect its Embark Safety account identification number(s) and password(s) ("Account I.D.'s") so that only key Subscriber personnel with an authorized need-to-know this sensitive information are given the ability to order and access Screening Reports. Subscriber shall not post or otherwise publicly display its Account I.D.'s. If a person who knows the Account I.D.'s leaves Subscriber's company or no longer needs to have access due to a change in duties, the Account I.D.'s should be changed immediately.
2. Subscriber shall place all terminal devices or systems used to obtain Screening Reports in a secure location within Subscriber's facility so that unauthorized persons cannot easily access them. After normal business hours or when left unattended, be sure to turn off and/or lock all such devices or systems used to access Screening Reports.
3. Subscriber shall secure hard copies and electronic files of Screening Reports within Subscriber's facility so that only authorized personnel can access them.
4. Subscriber shall shred or otherwise permanently destroy all *hard copy* Screening Reports when no longer needed and when applicable regulation(s) permit destruction, to prevent the unauthorized access to and/or use of applicant/employee data and/or any other personally identifiable information of applicants/employees.
5. Subscriber shall erase and overwrite or scramble *electronic files* containing Screening Reports and Applicant information when no longer needed and when applicable regulation(s) permit destruction, to prevent the unauthorized access to and/or use of applicant/employee data and/or any other personally identifiable information of applicants/employees.
6. Subscriber shall make all appropriate employees aware that Subscriber can order and use Screening Reports only for permissible employment purposes, and that employees may not order their own reports nor should they order or access the report of a family member or friend unless it is approved for the permissible employment purpose authorized in, and conducted in accordance with this Agreement.
7. If Subscriber obtains Verification Services or Screening Reports containing consumer credit information from Embark Safety, Subscriber shall, in addition to its other obligations in this Agreement, comply with the "Access Security Requirements" and hereby incorporate by reference into this Agreement. Subscriber acknowledges that the Access Security Requirements are mandated by Embark Safety Supplier(s) and may be updated from time to time. By executing this Agreement, Subscriber represents to Embark Safety that Subscriber has reviewed and will comply with the Access Security Requirements to the extent applicable to the products and services Subscriber obtains from Embark Safety.

**Attachment B**

**Standard Features**

- ✓ Account configuration and permission setting for system Users
- ✓ Basic system fee (monthly monitoring)
- ✓ Florida driver license check (weekly)
- ✓ Florida driver license check (daily)
- ✓ Record not found fee
- ✓ MVR connection fee

- Included
- \$0.50 month per driver
  - \$0.30 month per driver + system fee
  - \$0.50 month per driver + system fee
  - \$2.00 per license
  - \$1.00 + State fee per MVR

**State Fees**

States	MVR History (years)	MVR State Fee	Cut Off	Turnaround
Alabama	3	\$9.75	None	Instant
Alaska	3	\$10.00	5:00 PM EST	In Excess of 7 Business Days
Arizona	39 months	\$6.00	None	Instant
Arkansas (Driver Check)	Status	\$2.00	None	Instant
Arkansas (Insurance)	3	\$8.50	None	Instant
Arkansas	3	\$11.50	None	Instant
California	7	\$2.00	None	Instant
Colorado	7	\$2.20	None	Instant
Connecticut	7	\$18.00	None	Instant
Delaware	3	\$15.00	None	Instant
District of Columbia (DC)	3	\$13.00	None	Instant
Florida	3	\$8.10	None	Instant
Florida	7	\$10.10	None	Instant
Georgia	3	\$6.00	None	Instant
Georgia	7	\$8.00	None	Instant
Hawaii	7	\$23.00	5:00 PM EST	9:00 AM EST
Idaho	3	\$9.00	None	Instant
Illinois	7	\$12.00	None	Instant
Indiana	10	\$7.50	None	Instant
Iowa	7	\$8.50	None	Instant
Kansas		\$8.70	None	Instant
Kentucky	3	\$5.00	None	Instant
Louisiana	3	\$6.00	None	Instant
Maine	3	\$7.00	None	Instant
Maryland	3	\$12.00	None	Instant
Massachusetts	10	\$8.00	None	Instant
Michigan	5	\$8.00	None	Instant
Minnesota	5	\$5.00	None	Instant
Mississippi	3	\$14.00	None	Instant
Missouri	7	\$5.80	None	Instant
Montana	7	\$7.25	None	Instant
Nebraska	5	\$3.00	None	Instant
Nevada	3	\$7.00	None	Instant
New Hampshire	5	\$13.00	None	Instant
New Jersey	5	\$12.00	None	Instant
New Mexico	3	\$6.50	None	Instant
New York	5	\$7.00	None	Instant
North Carolina	7	\$8.00	None	Instant
North Dakota	3	\$3.00	None	Instant
Ohio	3	\$5.00	None	Instant
Oklahoma	3	\$27.50	None	Instant
Oregon	10	\$10.63	5:00 PM EST	6:00 PM EST
Pennsylvania	10	\$12.00	4:30 PM EST	5 Business Days
Rhode Island	3	\$20.00	None	Instant
South Carolina	3	\$7.25	None	Instant
South Dakota	3	\$5.00	None	Instant
Tennessee	3	\$7.00	None	Instant
Texas	3	\$6.50	None	Instant
Texas (CDL Only)	5	\$7.50	None	Instant
Utah	3	\$9.00	None	Instant
Vermont	3	\$17.00	None	Instant
Virginia		\$7.00	None	Instant
Washington	3	\$13.00	None	Instant
West Virginia	7	\$9.00	None	Instant
Wisconsin	5	\$7.00	None	Instant
Wyoming		\$5.00	None	Instant
Wyoming (CDL Only)	10	\$5.00	None	Instant