

**ALABAMA JUSTICE INFORMATION COMMISSION
ADMINISTRATIVE CODE**

**CHAPTER 265-X-2
SECURITY AND CONFIDENTIALITY OF CRIMINAL JUSTICE INFORMATION**

**265-X-2-AF Appendix F - Alabama Criminal Justice Information
Center (ACJIC) Memorandum Of Agreement For Third
Party Users Of The Criminal History Sales (CHS)
System.**

ALABAMA CRIMINAL JUSTICE INFORMATION CENTER (ACJIC)

MEMORANDUM OF AGREEMENT FOR

THIRD PARTY USERS OF THE ALABAMA BACKGROUND CHECK (ABC) SYSTEM

This "Memorandum of Agreement for Third Party Use of the Alabama Background Check (ABC) System" (Third Party Agreement) may be submitted to the Alabama Criminal Justice Information Center (ACJIC), which administers the Alabama Background Check (ABC) System, by an active ABC System Subscriber / employer

This Memorandum of Agreement must be read and signed by an authorized representative of the Subscriber (employer) and by an authorized representative of the Third-Party User entity the subscriber seeks approval to request and/or obtain ABC reports on its behalf. After a determination is made approving and/or disapproving the "Third Party User" access by the Alabama Criminal Justice Information Center, the ABC System Subscriber and the "Third Party User" will be notified of the status of this request by ACJIC.

Eligibility

Subscribers to the ABC system may request that another entity be permitted to search and/or obtain ABC reports only for employees or prospective employees who have provided the Subscriber with the "right to know" through a signed ABC System Report waiver. This practice is only allowable when the Subscriber has outsourced its personnel recruiting and screening activities to the Third Party User business entity, therefore making it necessary for that entity to access the ABC system and/or view the ABC Reports on the Subscriber's behalf.

In order to request that a "third party user" be allowed to receive ABC reports, the subscriber must have a valid ABC System subscription agreement in place with ACJIC. Additionally, the subscriber must provide ACJIC with documentation stating that the specified third party will search and/or obtain ABC Reports only on the behalf of the subscriber while conducting the Subscriber's employment recruitment and screening services.

The Subscriber must sign this agreement, must verify that the information included in this Memorandum of Agreement is accurate, and must ensure that the original, signed Memorandum of Agreement is sent to the Alabama Criminal Justice Information Center at its current mailing address. The Subscriber must also retain a copy of this signed "Memorandum of Agreement for Third Party Use of the Alabama Background Check (ABC) System".

Third Party User Agreement

ABC System Third Party Users must provide the name of the authorized ABC System Subscriber when requesting and/or obtaining any information through the Alabama Background Check (ABC) system. Prior to conducting any search, the Third Party User must pose a copy of the waiver signed by the employee or prospective employee of the subscribing agency or entity on whose behalf the search is conducted. ABC System Waivers must be sent to ACJIC electronically in a form prescribed by ACJIC.

By signing this agreement, the Subscriber and the Third Party User both agree that the data obtained from the ABC system will **not** be used for any unlawful purposes, including violations of state or federal employment laws or regulations. The Subscriber and the Third Party User certify that all information obtained through the ABC system is for the express use of those who have established a "right to know", which is defined as having a signed waiver from the employee or prospective employee whose criminal history is being requested. **By signing this document, the Subscriber and the Third Party User also certify that the information requested and/or obtained through the ABC System will not be shared with any external agent or entity other than the subscriber agency for which the ABC System report was requested. The Subscriber and the Third Party User also certify that information obtained through the ABC system will not be compiled into a database, spreadsheet or other document intended to aggregate the criminal history records of multiple individuals into a single electronic file.**

The Subscriber and the Third Party User also agree to notify ACJIC in the event their agreement and/or relationship involving the outsourcing of the personnel recruiting and screening activities is terminated and/or no longer exists. Once a Third Party User ceases to provide personnel services for the Subscriber, the Third Part User agrees to immediately cease any attempt to access to the ABC system under username(s) and password(s) associated with the subscriber, and the Subscriber agrees to immediately contact ACJIC to terminate this Memorandum of Agreement and to request that the Third Party User's access to the ABC System on the Subscriber's behalf be terminated.

The Subscriber and the Third Party User agree to indemnify and hold harmless ACJIC, the State of Alabama, its officers, directors and employees for any claim of damages (including attorneys' fees and expenses incurred by ACJIC and/or the State of Alabama in defending any claim for damages) resulting from information obtained through the ABC system.

By signing this agreement, the Subscriber and the Third Party User both acknowledge ACJIC's right to audit queries made through the ABC system and all penalties associated with misuse of the system as described in the next section.

Audit Requirements and Penalties for Misuse of the ABC System

ACJIC retains the right to inspect (audit) the Third Party User's agreement and any and/or all of the authorizing employee/prospective employee waivers at any time during the subscription agreement or within three years of termination of service. In the event it is determined an ABC report was obtained by a third party user without a valid third party user's agreement and/or employee waiver, the receiving entity may be subject to criminal prosecution for misuse of criminal history data as defined in §41-9-601, Code of Alabama 1975.

Third party users may be required to have the audit copies of user's agreements and waivers available to ACJIC in (1) a single location to be determined by ACJIC; and (2) on a specific date or dates to be determined by ACJIC.

§41-9-601 - Obtaining, etc., of criminal offender record information under false pretenses, falsification of information, etc.

Any person who willfully requests, obtains or seeks to obtain criminal offender record information under false pretenses or who willfully communicates or seeks to communicate criminal offender record information to any agency or person except in accordance with this article, or any member, officer, employee or agent of the ACJIC, the ACJIC or any participating agency who willfully falsifies criminal offender record information or any records relating thereto shall, for each offense, be fined not less than \$5,000.00 nor more than \$10,000.00 or imprisoned in the state penitentiary for not more than five years or both.

Additional penalties that may apply in the event criminal history information is unlawfully obtained include, but are not limited to:

§13A-8-100 - Offenses against intellectual property.

(a) Whoever willfully, knowingly, and without authorization or without reasonable grounds to believe that he or she has such authorization, attempts or achieves access, communication, examination, or modification of data, computer programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(b) Whoever willfully, knowingly, and without authorization or without reasonable grounds to believe that he or she has such authorization, destroys data, computer programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(c) *Whoever willfully, knowingly, and without authorization or without reasonable grounds to believe that he or she has such authorization, discloses, uses, or takes data, computer programs, or supporting documentation residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.*

(d) (1) *Except as otherwise provided in this subsection, an offense against intellectual property is a Class A misdemeanor, punishable as provided by law.*

(2) *If the offense is committed for the purpose of devising or executing any scheme or artifice to defraud or to obtain any property, then the offender is guilty of a Class C felony, punishable as provided by law.*

(3) *If the damage to such intellectual property is greater than two thousand five hundred dollars (\$2,500), or if there is an interruption or impairment of governmental operation or public communication, transportation, or supply of water, gas, or other public or utility service, then the offender is guilty of a Class B felony, punishable as provided by law.*

(4) *Whoever willfully, knowingly, and without authorization alters or removes data causing physical injury to any person who is not involved in said act shall be guilty of a Class A felony, punishable as provided by law.*

ABC SYSTEM SUBSCRIBER CERTIFICATION AND AGREEMENT:

By signing this document, I certify that I am an authorized official of the ABC System Subscriber (employer) listed below; and that a current and active agreement and/or relationship involving the outsourcing of the personnel recruiting and screening activities exists between the ABC System Subscriber (employer) and the "Third Party User" entity listed below; and that the ABC System Subscriber (employer) I represent requests the approval of this "Third Party User" to submit and/or obtain ABC Reports under our authority and on our behalf; and that I, on the behalf of the ABC System Subscriber (employer), hereby agree to the terms and conditions contained in this "Memorandum of Agreement for Third Party Use of the Alabama Background Check (ABC) System".

Signature of Authorizing Official: _____ Date of Signature: _____

Printed Name and Title of Authorizing Official: _____

Name of ABC System Subscriber (Employer) Company: _____

Physical (Street) Address ABC System Subscriber (Employer) Company: _____

City: _____ State: _____ Zip Code: _____

Mailing Address of ABC System Subscriber (Employer) Company: _____

City: _____ State: _____ Zip Code: _____

Work Phone & Extension: _____ E-mail Address: _____

ABC SYSTEM "THIRD PARTY USER" CERTIFICATION AND AGREEMENT:

By signing this document, I certify that I am an authorized official of the "Third Party User" entity that the ABC System Subscriber (employer); and that a current and active agreement and/or relationship involving the outsourcing of the personnel recruiting and screening activities exists between my entity and the ABC System Subscriber (employer); and that the information provided below is accurate; and that I hereby agree to the terms and conditions contained in this "Memorandum of Agreement for Third Party Use of the Alabama Background Check (ABC) System."

Signature of Authorizing Official: _____ Date of Signature: _____

Printed Name and Title of Authorizing Official: _____

Name of ABC System Subscriber (Employer) Company: _____

Physical (Street) Address ABC System Subscriber (Employer) Company: _____

City: _____ State: _____ Zip Code: _____

Mailing Address of ABC System Subscriber (Employer) Company: _____

City: _____ State: _____ Zip Code: _____

Work Phone & Extension: _____ E-mail Address: _____

Author: Becki R. Goggins**Statutory Authority:** Code of Ala. 1975, §41-9-594.**History:** New Appendix: Filed July 25, 2006; effective August 29, 2006. **Amended:** Filed July 29, 2008; effective September 2, 2008.