GDOT Publications
Policies & Procedures

Form Word: 8068-1c - Data Access Authorization and Confidentiality Agreement (For Non-Governmental Entities Only)

Section: Network Security   **Reports To:** Deputy Commissioner

Office/Department: Division of Information Tech   **Contact:** 404-631-1000

See Below.

DATA ACCESS AUTHORIZATION AND CONFIDENTIALITY AGREEMENT

[For Non-Governmental Entities Only]

We, the **[ENTER PRIVATE ENTITY'S LEGAL NAME]** ("Recipient"), acknowledge and agree to the following terms with respect to maintaining the integrity, security, and confidentiality of the Sensitive Information maintained by GDOT for which access has been requested by the Recipient for the purpose(s) set out in this Agreement ("Purpose").

In consideration of and as a condition of receiving access to GDOT Data, the Recipient agrees as follows:

Section I. Definitions:

1.1   *"Business Days"* means any day that is not a Saturday, a Sunday, or a State of Georgia or federal public holiday.

1.2   *"GDOT Data"* means any data or information that is generated, modified, transmitted, stored, used and maintained by GDOT, and includes Sensitive Information and non-sensitive/public information.

1.3   *"Sensitive Information"* means any GDOT Data or information that: (a) GDOT or any of its government customers maintains, or has access to, that is not subject to disclosure under Georgia law, including but not limited to the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et. seq.*; or (b) any information that is hosted on the GDOT network that is not available to the public, or not accessible through GDOT's public website; or (c) any information that GDOT or any of its government customers considers confidential, sensitive or classified.

1.4   *"Nondisclosure Period"* means the period beginning on the Effective Date of this Agreement and surviving the expiration or termination thereof, until such time that the Sensitive Information, or any components thereof, is or becomes non-sensitive information, such determination to be made by GDOT.

1.5   *"Personal Data"* is a subset of Sensitive Information that is related to any identified or identifiable natural or legal person, including but not limited to government employees; and any other additional data deemed as personal data under any applicable federal personal data protection laws.

Section II. Term and Termination.

2.1   This Agreement shall commence on the date the signed copy of this Agreement is returned to GDOT ("Effective Date") and will terminate the earlier of (i) _____ months/years therefrom or (ii) early termination by GDOT. Upon the expiration date or early termination date of this Agreement, Recipient's access to and use of the GDOT Data will cease and Recipient shall comply with the termination procedures set forth in Section 2.3 of this Agreement. However, irrespective of the expiration or early termination of this Agreement, the obligations of confidentiality contained in this Agreement shall continue to bind the Recipient for the Non-Disclosure Period.

2.2   Termination. This Agreement may terminate or may be terminated by GDOT as follows:

2.2.1   Convenience, following thirty (30) days advance written notice, pursuant to Section VI, *Notice*;

2.2.2   Immediately, if GDOT determines that (1) the Recipient, either directly or indirectly, has materially breached any of its obligations under this Agreement; (2) there is a substantial likelihood that the Recipient's

acts or omissions create an immediate threat or will cause irreparable harm to GDOT; (3) the requirements of any law, regulations and/or judicial action have not been met; and/or (4) as a result of changes in laws, regulations or regulatory or judicial action, that the requirements of any law, regulation or judicial action will not be met.

2.3   Upon termination or expiration of this Agreement, whichever occurs sooner, access to the GDOT data as set forth in Exhibit A shall end and Recipient shall be required to either return all Sensitive Information or to destroy such Sensitive Information via a method mutually agreed upon. The Recipient shall not retain the Sensitive Information or any parts thereof (whether electronic, paper, or any form, and regardless of medium on which such Sensitive Information is stored) after the Sensitive Information is returned or destroyed, and permanently delete such information from its computer systems. Where it is impossible for the Recipient to remove all traces of the Sensitive Information from its business and/or its computer systems, the Recipient shall notify GDOT as per Section VI Notice, and then any residual Sensitive Information will continue to be subject to the confidentiality obligations set out in this Agreement, but the Recipient shall have no further right to use such Sensitive Information.

Section III. Engagement for Disclosure and Use of Sensitive Information:

3.1   The Recipient will receive access to GDOT Data for the period set forth in Section II of this Agreement in the manner, method, format and/or applications or environment described in the following exhibit(s):

        Exhibit A. **Data Sharing Plan**

3.2   The Recipient shall not disclose any GDOT Data to any third party.

3.3   The Recipient shall not directly and/or indirectly use and/or disclose the GDOT Data in whole or in part except in accordance with this Agreement and the Purpose set forth herein. Any use of the GDOT Data outside the Purpose set forth in this Agreement shall constitute a material breach and shall be subject to immediate termination in accordance with Section 2.2 of this Agreement.

3.4   The Recipient shall only allow access to the GDOT Data to those employees, consultants and/or professional advisors who have a need to access and use it for the performance of the Purpose.

3.5   The Recipient shall not disclose any Personal Data, nor any combination of GDOT Data that may identify an individual.

3.6   The Recipient acknowledges that during the course of this Agreement and the Nondisclosure Period, Recipient shall, and shall require its employees, consultants and/or professional advisors, not to store, save or transfer any GDOT Data to any personal computer equipment or personal storage device belonging to Recipient, or to disclose such information to any third party not authorized to receive such GDOT Data.

3.7   During the Nondisclosure Period, Recipient will hold in confidence all Sensitive Information that it has access to and that comes into Recipient's knowledge and will not sell, transfer, distribute, disclose, publish or otherwise make use of such Sensitive Information, directly or indirectly, on behalf of Recipient or on behalf of any other person or entity without the prior written consent of GDOT.

3.8   The Recipient shall not use GDOT Data nor any derivative work created therefrom in a manner that encourages, intentionally or not, undesirable driver behavior or otherwise adversely impacts the safety of the traveling public.

3.9   Under no circumstances during the term of this Agreement shall the Recipient sell/re-sell, transfer, share, publish, display, distribute, or otherwise make available any GDOT Data to third parties without prior written approval from GDOT.

3.10   The Recipient acknowledges and agrees that it does not acquire by implication or otherwise any right, title and/or interest in GDOT Data except as expressly set out in this Agreement. The GDOT retains all rights to the GDOT Data and may, in its sole discretion, enter into similar agreements with other entities.

3.11   The restrictions stated in this Section III are in addition to and not in lieu of protections afforded to GDOT Data under applicable federal or state law. Nothing in this Agreement is intended to or shall be interpreted as diminishing or otherwise limiting GDOT's rights under applicable law to protect GDOT Data.

3.12   The GDOT shall be cited for providing the data used in the creation of the any analyses, reports, studies, proposals and any similar documents, along with the following disclaimer as set forth below:

> The contents of this **[*report/study/publication*]** reflect the view of the author(s) who is (are) responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official view or policies of the Georgia Department of Transportation. This report does not constitute a standard, specification, or regulation.

Section IV.   Safekeeping and Security Requirements:

4.1   Recipient agrees to abide by GDOT's Information Security Policies and with GDOT's internal policies regarding the protection and dissemination of GDOT Data, whether in written, oral, or electronic form. To the extent the Recipient needs to use the GDOT network to access the GDOT Data, Recipient agrees that it will also comply with the following GDOT core security policies as a condition of being granted such access:

    (1)   8010-3- User Responsibilities

    (2)   8030-3- Password Authentication

    (3)   8068-1- Network Security Controls and Remote Access

4.2   The Recipient is expressly prohibited from and shall ensure that its employees, consultants and/or professional advisors do not: (1) disclose password or access credentials/information to GDOT Data with any third party who is not involved in the project or Purpose stated herein; (2) do not share accounts, passwords or access credentials/information to other persons, third parties, systems, or entities; (3) maintain any GDOT Data after termination of this Agreement or completion of the Purpose; or (4) disclose or provide GDOT Data, whether written, oral or electronic, to those other than an employee, consultants and/or professional advisor of Recipient and has a need to know.

4.3   The Recipient understands and agrees that GDOT will provide GDOT Data on an as needed basis, in full or in part, when requested by the Recipient. Upon Recipient's termination of Recipient's engagement with GDOT, Recipient agrees to any additional instructions on the handling of GDOT Data as required by GDOT.

4.4   If Recipient becomes aware of any unauthorized use and/or disclosure of GDOT Data, Recipient must immediately (1) inform GDOT of all the circumstances surrounding the unauthorized use and/or disclosure as per Section VI Notice; and (2) take all reasonable steps to prevent any further unauthorized use and/or disclosure. The Recipient further agrees that it will cooperate fully with GDOT in any data breach forensics and notification steps that GDOT deems necessary or appropriate to comply with the requirements of the law.

4.5   The Recipient shall use at least the same degree of care to protect the use and/or disclosure of GDOT Data as it uses to protect its own confidential and/or proprietary information (subject to the fact that Recipient must have used at least a reasonable level of care to prevent unauthorized use and/or disclosure).

4.6   Nothing in this Agreement shall place any obligation on GDOT to disclose its GDOT Data to the Recipient. Disclosure is entirely at GDOT's discretion.

4.7   The Recipient will comply with and abide by all federal and state laws, rules, regulations, statutes, case law, precedent, policies, or procedures that may govern the Agreement or GDOT Data.

Section V. RESERVED

Section VI.   Notice:

6.1   Notices issued pursuant to this Agreement shall be in writing and shall be addressed to the receiving Party as follows:

For the Department:

Department of Transportation	Department of Transportation
Office of Information Technology	[Enter Division/Office Name]
Attn: IT Administrator	Attn:
600 W. Peachtree Street	[Enter Address]
Atlanta, Georgia 30308	[Enter Address]
E-mail: _____	E-mail: _____

For Recipient:

[ENTER FULL LEGAL NAME OF ENTITY]

Attn: _____

Address: _____

_____

Phone: _____

E-mail: _____

6.2   Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be in writing and delivered by personal delivery; first class certified or registered mail, return receipt requested; U.S. Express mail; an express overnight service (such as Federal Express); or, facsimile or email (with confirmation and concurrent mailing), addressed to the designated representative for the Party at the address identified in Section 5.1. Each such notice shall be deemed to have been provided:

6.2.1   At the time it is actually received; or,

6.2.2   Within one (1) day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

6.2.3   Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail.

6.3   It shall be the responsibility of Recipient to inform GDOT of any change in address in writing no later than five (5) Business Days after the change.

Section VII.   Liability:

7.1   The Recipient understands and agrees that GDOT makes no representation, warranty, condition or guarantee of any kind, whether express, implied, statutory or of any other kind, in connection with the GDOT Data, nor owes or accepts any duty to any person in connection with the GDOT Data. Without prejudice to the generality of the foregoing, GDOT does not warrant or represent that the GDOT Data is correct, complete, up to date, authentic, or fit for any particular purpose.

7.2   The Recipient understands and agrees that GDOT will not be liable for any loss, claim, damage, expense or cost whatsoever, howsoever arising, whether in contract, tort (including negligence) or otherwise, arising from or in connection with the subject matter of this Agreement or the GDOT Data disclosed thereunder. Without prejudice to the generality of the foregoing, GDOT will not be liable to any person for any loss of revenue, profits or opportunity; or consequential or indirect loss.

7.3   The Recipient understands and agrees that GDOT does not warrant that it will be able to provide the GDOT Data without interruption and shall not be responsible for any damages or lost profit(s) resulting therefrom.

7.4   The Recipient agrees to indemnify, defend and hold harmless GDOT including its respective directors, officers, officials, employees, agents, representatives, advisors and consultants against any and all losses, claims, lawsuits, demands, causes of action, judgments, damages, or liabilities in connection with or as a result of (i) any breach of its obligations under this Agreement, (ii) use of the GDOT Data, including any derivative works created therefrom, (iii) any infringement of any patent, copyright, trademark, trade secret, or other proprietary right of any third party resulting from use of the GDOT Data by the Recipient, its agents, or its employees working at its direction or on its behalf under or related to this Agreement, or (iv) any violation of any pertinent Federal, State or local law, rule or regulation by the Recipient, its agents, or employees working at its direction or on its behalf under or related to this Agreement. The Recipient shall be liable under this Agreement for the acts or omissions of its own employees, consultants and professional advisors (whether or not they remain as its employees, consultants and/or professional advisors) as if they were its own acts or omissions under this Agreement.

7.5   The Recipient shall be solely liable for any derivative works developed by it or on its behalf using the GDOT Data made available under this Agreement.

7.6   The Recipient shall be liable for the appropriate use, fitness, and application of GDOT Data to purpose. The Recipient shall exercise professional judgement that the GDOT Data is not used in a manner that misrepresents or misleads in the direct understanding or interpretation of facts.

7.7   The Recipient understands and agrees that GDOT Data is not fault-tolerant and may not be designed or intended for use in any high-risk or hazardous environment where the failure or malfunction of the use of GDOT Data can reasonably be expected to result in death, personal injury, severe property damage, or severe environmental harm. Accordingly, any use of the GDOT Data in a high-risk or hazardous environment is at Recipient's own risk.

Section VIII. General Provisions:

8.1   No Third-Party Beneficiaries.   Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.

8.2   Sovereign Immunity.   Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions under the Georgia Constitution.

8.3   Continuity.   Each of the provisions of this Agreement will be binding upon and inure to the benefit and detriment of the parties and the successors and assigns of the parties.

8.4   Whereas Clauses and Exhibits.   The Whereas Clauses and Exhibits hereto are a part of this Agreement and are incorporated herein by reference.

8.5   Assignment.   The parties hereto may not assign its rights and/or obligations under this Agreement to any third party (whether in whole or in part) without the prior written consent of GDOT.

8.6   Counterparts.   This Agreement may be executed in two original counterparts, which shall constitute one and the same instrument. Any signature below that is transmitted by facsimile or other electronic means shall be binding and effective as the original.

8.7   Governing Law.   This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating to this Agreement, shall be governed by and construed in accordance with the laws of the State of Georgia, without application of conflicts of laws principles.

8.8   Amendment; Waiver.   No amendment, modification, or discharge of this Agreement shall be valid or binding unless set forth in writing and duly executed by each of the parties hereto. Any waiver by any party or consent by any party to any breach of or any variation from any provision of this Agreement shall be valid only if in writing and only in the specific instance in which it is given, and such waiver or consent shall not be construed as a waiver of any subsequent breach or any other provision or as consent with respect to any similar instance or circumstance.

8.9   Interpretation.   Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed

against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

8.10 <u>Entire Agreement.</u> This Agreement, together with any documents incorporated herein, constitutes the entire agreement with respect to its subject matter hereof and supersede all other prior and contemporaneous statements, instructions, directions, agreements, and understandings regarding its subject matter. No written or oral statements, agreements, or understandings that are not set out, referenced, or specifically incorporated in this Agreement shall in any way be binding or of effect between the Recipient and GDOT.

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Signatures are on the following page.

The Recipient acknowledges and agrees to the terms of this Agreement as of _____.

                                                            Date

Signature: _____

Print Name: _____

Title: _____

Agency Represented: _____

Approved by: (For GDOT use ONLY)

GDOT Division/Office:_____

By: _____

Print Name: _____

Data Security Categorization: _____

Approval Date: _____

Exhibit A

DATA ACCESS AND USE PLAN

Purpose For Information Request:

Intended Use of GDOT Data:

GDOT Data Authorized for Access/Transfer:

Methods of GDOT Data Access/Transfer:

Frequency of GDOT Data Access/Transfer:

Environment on Which Information Will be Accessed/Transferred:

Authorized Users of GDOT Data:

How GDOT Data Shall be Protected in Recipient Environment:

Form Word: 8068-1c- Data Access Authorization and Confidentiality Agreement (For Non-Governmental Entities Only)

References:

Click here to enter Policy references, if any.

History:

8068-1a retired, new document: 03/25/21;
Reviewed: 3/25/2021