

**SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES
ELECTRONIC LIEN AND TITLE (ELT) SERVICE PROVIDER CONTRACT**

This Contract is entered into between _____, hereinafter referred to as the Provider, and the South Carolina Department of Motor Vehicles, hereinafter, referred to as the DMV. Lenders or other business partners contracting with the Provider are hereinafter referred to also as the Business Partner. This contractual period will begin on the date it has been signed by both parties and shall continue in force until modified, amended or terminated.

WHEREAS, the DMV has established a program, Electronic Lien and Title Program (ELT) which will allow Participating Business Partners, through the Provider, to record liens, release liens, request change of owner address, provide 'Mail to' address, request a printed title and perform any other transactions as developed in the ELT program; and,

WHEREAS, to facilitate this ELT program, the Provider will or may have entered into agreements with approved Participating Business Partners to enable the Participating Business Partner(s) to provide ELT services; and,

WHEREAS, the Provider shall use a computerized interface which shall allow any applicable approved Participating Business Partner to provide the following services: Lien Notification from DMV to Lender, Lien Release Due to Error, Change Owner Address by Lienholder, Release Lien with 'Mail to' Address, Request Printed Title and any additional services developed for the program.

1. RESPONSIBILITIES OF PROVIDER

The DMV Administration has established Business Rules and Program Standards for the operation of the ELT program. The ELT Business Rules are hereby incorporated herein as though set forth here verbatim.

The Provider shall monitor any applicable Participating Business Partner's performance in accordance with the ELT Business Rules and Program Standards and immediately report any discrepancies or violations to DMV.

The Provider shall attend requisite meetings and attend any training or workshops required by the DMV.

The Provider shall provide training to any applicable Participating Business Partners and Authorized Users. As part of the training, the Provider shall instruct participating Business Partners and Authorized Users of DMV's standard of non-disclosure and due diligence.

The Provider(s) who have entered into contractual agreement with DMV and who provides authorized access to DMV data, must provide DMV with the original of the Non-disclosure agreement for the Provider company as a whole and are thereby responsible for ensuring lender or business partners of the service provider act accordingly as designated by the Non-disclosure agreement.

Pursuant to SC Code of Laws §56-19-265, the Business Partner will be required to maintain all liens electronically. DMV will establish procedures to ensure compliance and may grant valid exceptions to be determined by DMV.

The participating Business Partner will be required to release all electronic liens using the electronic lien and title computerized interface. However, should technical issues arise preventing such process, DMV will agree to make provisions for release of lien by receipt of written notice of lien satisfaction from the Business Partner.

The Provider, as a commercial entity who either transmits or retrieves data from the department, agrees to pay to DMV a transaction fee pursuant to South Carolina Code of Laws §56-19-265.

In representation of any Participating Business Partner, the Provider will accrue costs associated with electronic lien recording transaction fees and subsequent lien transmittal for title correction fees. The fees as assessed by DMV and industry representatives pertain to the recording of an electronic lien, title corrections and conversion of paper titles to ELT. Each fee yielding feature is defined in detail in the ELT Program Standards.

DMV shall not be responsible for any charges (transaction fees) accrued by the Provider (or Business Partners subscribed to the Provider) due to inaccurate information from the Business Partner transmitted through the Provider.

The Provider shall deposit, through the electronic network, all monies owed to the DMV and/or collected by any approved Participating Business Partner to the credit of the DMV with the Treasurer of the State of South Carolina through DMV designated bank or financial institution on the same date as instructed in the Business Rules and Program Standards.

The Provider shall submit all reports, including daily activity reports and such other reports as may be required by the ELT Business Rules and Program Standards, and in all other respects to comply with the Code of Laws for the State of South Carolina.

The Provider shall maintain and retain records of all ELT transactions processed and shall make them available for inspection and audit by DMV and authorized representatives of the State of South Carolina.

The Provider shall abide by all applicable state and federal privacy laws related to the receipt, management, and dissemination of DMV data, including those referenced in *Section 4* of this contract.

The Provider, in the instance of merger or acquisition, as procurer will continue to be responsible for fulfilling and maintaining the prior contracts and accounts of any companies absorbed or acquired, until such time as its Participating Business Partners of those acquisitioned companies enter into separate contracts with Provider in the name of the procuring company, or the undertaken entities terminates this contract as provided for in *Section 9* of this contract.

The Provider shall be entitled to charge Participating Business Partner monthly participation fees and such other fees for the use of ELT and the transfer of fees and other

monies to the DMV or others as may be provided for in its agreements with Participating Business Partners.

2. AGREEMENTS OF DMV

DMV agrees to make available to Provider and Participating Business Partners access to Vehicle Data to allow Provider to provide Participating Business Partners with ELT Services at an agreed upon cost. Access to Vehicle Data by Provider, and by Provider to Participating Business Partners, pursuant to this section shall be solely for fulfilling the purpose of this Contract. DMV warrants that it has all necessary statutory authority to grant such access and to allow for the provision of ELT in the State of South Carolina. "Vehicle Data" means the vehicle title and customer records maintained on the DMV computerized system.

The access to and use of DMV Vehicle Data by Provider and Participating Business Partners is limited to the completion of ELT transactions, as specified in the ELT Program Standards.

DMV agrees that the Provider, in providing ELT Services, when acting within the scope of this contract and the Program Standards as they may be amended from time to time, is acting on behalf of the DMV in carrying out a function of DMV as contemplated by Section 2721(b) (1) of the Federal Driver's Privacy Protection Act and related South Carolina driver privacy legislation and all successor legislation.

3. ACCURACY OF DATA TRANSMISSION

Provided that the Provider did not make any changes to the information received or transmitted, nothing in this Contract shall be construed to create, on the part of the Provider any duty to make any inquiry regarding the actual accuracy of any information received and transmitted by Provider, completely and without substantive change.

4. INFORMATION ACCESS

The Provider shall not sell or impart to any person, firm or corporation any information obtained from DMV data, including listings of individuals, for any reason. Information obtained through such access is subject to the restrictions upon use and dissemination imposed by the South Carolina Freedom of Information Act of the S.C. Code of Laws Ann. §30-4-10, *et seq.*, the Family Privacy Protection Act of 2002, §30-2-10 *et seq.*, the provisions of the Federal Driver Privacy Protection Act of 1994, 18 U.S.C. §2721, *et seq.*, and any DMV Policy on access to records or any successor laws or regulations adopted by the State of South Carolina or DMV with regard to disclosure of dissemination of any information obtained from DMV records or files.

By signing this Contract, the Provider warrants that the signatory and all of its participating personnel are familiar with and shall abide by all provisions of the Federal Driver Privacy Protection Act of 1994, 18 U.S.C. §2721 *et seq.*, and the South Carolina Freedom of Information Act in the S.C Code of Laws Ann. §30-4-10, *et seq.*, and the Family Privacy Protection Act of 2002, §§30-2-10 *et seq.*, which further limit the use and access to personal information in South Carolina.

The Provider shall keep records for a period of five years of person(s) to whom the information is disclosed and the purpose for which the information is to be used, and to make the records available to the DMV or its designee upon request.

5. INDEMNIFICATION AND LIMITATION OF LIABILITY

The Provider shall indemnify the DMV for and against any and all claims, losses, damages, judgments, liabilities or similar costs and expenses which arise in whole or in part out of the acts or omissions of the Provider with respect to this program or the Provider's failure to abide by the terms of this Contract, including, without limitation, reasonable attorney's fees and all other costs of defending any such action or claim.

Except with respect to its obligations set forth in this section and *Section 4*. hereof and except for damages caused by the intentional misconduct or grossly negligent or wanton conduct of the Provider, the Provider's total liability in any event for any monetary damages suffered by DMV, including without limitation, any indirect, special, incidental, or consequential damages resulting from the loss of data, DMV's use of the products and services provided by the Provider hereunder, or the performance or nonperformance by the Provider of its obligations under this contract, whether or not the Provider was advised of the possibility of such damages and whether or not such damages arise in tort, contract or under any other theory of liability, shall be expressly limited to the recovery by DMV under the terms of the surety bond described below. Without limiting the foregoing in any way, the Provider shall not have any liability to DMV for any claims, losses, damages, judgments, liabilities or similar costs and expenses resulting directly or indirectly from the misappropriation or misuse by a Participating Business Partner of any vehicle record obtained from DMV, or any other act or omission of a Participating Business Partner, including, without limitation, any Participating Business Partner's failure to abide by the Program Standards if (a) the Provider had no notice or knowledge of such misappropriation or misuse or (b) the Provider did have suspicions of Participating Business Partner wrongdoing and immediately reported the suspicions and the results of any investigations to the DMV.

The Provider shall provide and maintain a surety bond in the amount of \$1,000,000.00 (one million dollars) to cover all claims, losses, damages, judgments, liabilities or similar costs and expenses incurred by the DMV which arise in whole or in part out of acts or omissions of the Provider with respect to the ELT program, *provided however*, that in lieu of providing and maintaining a surety bond in the amount of \$1,000,000 (one million dollars) Provider may provide a \$1,000,000 (one million dollar) certificate of insurance for errors and omissions from an insurance company licensed to do business in South Carolina.

6. CONFIDENTIALITY; INTELLECTUAL PROPERTY OWNERSHIP AND SECURITY

(A) By Provider. The Provider shall be responsible for safeguarding the computerized equipment, which provides access to the computerized network for approved Participating Business Partners, and limit access to those persons who are authorized users of the network who have been properly instructed as to their duties and responsibilities as authorized users under this Contract. The Provider shall implement procedures to ensure that the computerized equipment is located in an area that

prevents information, including any printed copy of a vehicle record, from being viewed by persons who are not authorized to use the equipment and interface. The Provider shall implement procedures to ensure that any printed copy of information obtained from DMV files shall be destroyed when its legitimate use has ended.

By signing this Contract, the Provider warrants that the signatory and all of its authorized participating personnel are familiar with and shall abide by all provisions of the Federal laws affecting access to and use of computer information include, but are not limited to, the following: 15 U.S.C.S. §§271 *et seq.*; 40 U.S.C.S. §§759 *et seq.* (Computer Security Act of 1987); 23 U.S.C.S. §401 (National Driver Register Act); 5 U.S.C.S. §552a (Privacy Act of 1974); 18 U.S.C.S. §1001 Computer Fraud and Abuse Act of 1986); 17 U.S.C.S. §109 (Computer Software Rental Amendments Act of 1990); and 15 U.S.C.S. §1681 (Fair Credit Reporting Act).

Data provided by the DMV may contain customer personally identifiable information (PII). If the Provider has any reason to believe that SCDMV data has been accessed, disclosed, acquired without proper authorization or that DMV data has been in any way compromised, Provider will alert the DMV immediately.

The Provider agrees to provide and document security awareness training for all employees/personnel with access to DMV data. As a minimum this training must emphasize the importance of protecting customer private information to include personally identifiable information (PII) against unauthorized disclosure. Training must also stress protecting passphrases and accounts providing access to the DMV data. Emphasis will be placed upon the use of strong passphrases containing a combination of at least fifteen characters including upper and lower case letters, at least one special character and at least one number. Emphasis must be placed upon not sharing passphrases.

- (B) By DMV. The Provider reserves full ownership rights to all works (including, without limitation, all forms of intellectual property related thereto) developed by it for utilization in connection with ELT. These works are comprised of, among other things, those components of ELT necessary to collect, assemble and transmit to and from the DMV the inquiries, information and funds transfers (if applicable to the Provider) which are the subject of the Contract. These components include, without limitation, any and all inventions, devices, processes, software and formulas utilized in or comprising any component of the Provider's network.

The parties acknowledge that all proprietary information and materials developed by the Provider in the course of developing ELT, including, without limitation, all formulas, patterns, compilations, programs, devices, methods, techniques and processes, may constitute "trade secrets" of the Provider within the meaning of that term as utilized in the Uniform Trade Secrets Act, in that they may possess independent economic value by virtue of not being generally known to other persons who could obtain economic value from their disclosure or use and are the subject to reasonable efforts to preserve their secrecy.

DMV agrees that during, or at any time after, the term of this Contract, it will not disclose, furnish or make accessible to any person, corporation, firm, partnership, or

other entity whatever any trade secret, technical data or know-how of any kind pertaining, directly or indirectly, to the subject matter of this Contract of which has been identified as confidential, including without limitation, any software programs, documentation or other specification, except as required to implement the terms of this contract and except for (i) information which is or becomes part of the public domain, (ii) information which is demonstrably known to the DMV previously not subject to a confidentiality or non-disclosure agreement, (iii) information which is independently developed by the DMV outside this Contract, or (iv) information which is rightly obtained by the DMV from third parties. The DMV will treat all plans, specifications, drawings, diagrams, software, computer programs, procedures, processes and other proprietary materials relating to ELT and the Provider's network as vendor proprietary information under the Provider's control for the purposes of the Freedom of Information Act, and agrees not to disclose such information unless required to do so by judicial order. Provider will indemnify DMV for court costs and attorney fees associated with defense of any legal action in which a third party seeks access to Provider's intellectual property.

7. NOTICE

Any notice given pursuant to this Contract must be in writing. Notice is determined by the earlier of when actually received by the addressee or five business days after the mailing of the notice to the DMV Director or Provider at the addresses listed below.

8. CHOICE OF LAW

This Contract was made and entered in pursuant to the laws of the State of South Carolina. The laws of South Carolina shall govern the resolution of any issue arising in connection with this Contract, including, but not limited to, all questions concerning the validity of this Contract, the capacity of the parties to enter therein, any modification or amendment thereto and the rights and obligations of the parties hereunder.

9. TERMINATION

DMV shall immediately suspend or may terminate the access privileges of the Provider and its Participating Business Partners without a hearing upon the Provider's or any of its Participating Business Partners breach of, or failure to fulfill any responsibility established pursuant to this Contract and Program Standards as they may be amended from time to time.

If DMV determines to its own satisfaction that the Provider or any of its Participating Business Partners have either misused or knowingly allowed the misuse of Vehicle Data, the DMV may, in addition to other penalties provided by law:

- (a) Terminate this contract immediately,
- (b) Require the return of all files and media containing information provided by the DMV,
- (c) Hold the Provider or Participating Business Partners responsible for any damages arising from the misuse of the information,
- (d) Make publicly available the evidence of information misuse, and
- (e) Prosecute or seek remedies made available to the DMV or the State.

Provider Name: _____

Account # _____

Either party may otherwise terminate this Contract upon thirty days written notice to the other party.

If DMV should terminate this Contract for any cause and paper titles are requested, the DMV will print and mail such titles to the Provider without cost. If the Provider terminates their participation in this process, such termination may limit or prevent the ability of participating Business Partners to conduct transactions with the DMV.

10. MODIFICATION OF THIS CONTRACT

This Contract is subject to change and modification due to changes in the DMV's procedures, the issuance of court orders, or changes in State and/or Federal laws, rules, and regulations. If the DMV changes its procedures, if court orders are issued, or if the laws, rules or regulations change such that the terms of this contract must be modified, the Provider, whenever possible, will be notified at least thirty-days in advance of such changes or modifications and Provider may, at its option, immediately terminate this Contract.

This Contract cannot be modified in any manner except by written amendment, which has been executed by the parties.

11. MISCELLANEOUS

This Contract is the exclusive statement of the parties with respect to its subject matter and supersedes all prior contracts, negotiations, representations, proposals, and awards, written and oral, relating to its subject matter.

PROVIDER

For notice purposes under this Contract, the notice address for the Provider is:

Provider:

Attention:

Address:

Telephone:

Provider Name: _____

Account # _____

As witness herein, the parties hereto have affixed their signatures and seals.

Provider

Authorized Representative (print name and title)

Authorized Representative (signature)

Date

Taxpayer Identification Number or Federal Employee Identification Number

Provider's Street Address of Principal Place of Business

SC DEPARTMENT OF MOTOR VEHICLES

The notice address of the DMV is:

South Carolina Department of Motor Vehicles
Attention: Executive Director
Post Office Box 1498
Blythewood, South Carolina 29016
Telephone: 803.896.8924
Facsimile: 803.896.8926

Authorized Agency Representative

Date