

# South Carolina Department of Motor Vehicles

## MUTUAL NON-DISCLOSURE AGREEMENT FOR ELECTRONIC LIEN AND TITLE (ELT) PROGRAM

This non-disclosure agreement ("Agreement") is between The South Carolina Department of Motor Vehicles ("SCDMV" or "Owning Party") having a principal place of business at 10311 Wilson Boulevard, Blythewood, South Carolina 29016-9018 and \_\_\_\_\_ or "Receiving Party") having a principal place of business at \_\_\_\_\_.

### RECITALS

- A. SCDMV wishes to disclose certain information pertaining to \_\_\_\_\_ respectively (the "Purpose"). This exchange includes all communication of information between the parties in any form whatsoever, including oral, written and machine readable form, pertaining to the above Purpose.
- B. SCDMV wishes to exchange the information for the sole purpose noted above and each party regards certain parts of the Information it possesses to be secret and desires to protect those parts from unauthorized disclosure or use (such secret parts being hereafter collectively referred to as "Information").
- C. SCDMV (as "Owning Party") is willing to disclose Information and \_\_\_\_\_ (as "Receiving Party") will receive Information on the terms and conditions set forth herein.

### AGREEMENTS

Therefore, SCDMV and \_\_\_\_\_ agree, as follows:

1. The Receiving Party will:
  - a. (1) Not disclose Information of Owning Party to any other person and (2) Use at least the same degree of care to maintain the Information confidential as Receiving Party uses in maintaining as confidential its own confidential Information, but always at least a reasonable degree of care;
  - b. Use the Information only for the above Purpose;
  - c. Restrict disclosure of the Information of the Owning Party solely to those employees of Receiving Party having a need to know such Information in order to accomplish the Purpose stated above;

- d. Advise each such employee, before he or she receives access to the Information, of the obligations of Receiving Party under this Agreement, and require each such employee to maintain those obligations.
  - e. Within fifteen (15) days following written request of Owing Party return to Owing Party all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the Information, or confirm to Owing Party, in writing, the destruction of such materials.
2. The Information shall remain the sole property of Owing Party.
3. OWNING PARTY MAKES NO REPRESENTATION WITH RESPECT TO AND DOES NOT WARRANT ANY INFORMATION PROVIDED UNDER THIS AGREEMENT, BUT SHALL FURNISH SUCH IN GOOD FAITH. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, OWNING PARTY MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED WITH RESPECT TO THE INFORMATION WHICH MAY BE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. OWNING PARTY SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM RECEIPT OR USE OF THE INFORMATION BY THE RECEIVING PARTY.
4. In the event of a breach or threatened breach or intended breach of this Agreement by either party, the other party, in addition to any other rights and remedies available to it at law or in equity, shall be entitled to seek preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach.
5. The Receiving Party will not export, directly or indirectly, any technical data acquired from Owing Party or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval, without first obtaining such license or approval.
6. The validity, construction, and performance of this Agreement are governed by the laws of the State of South Carolina, and suit may be brought in South Carolina to enforce the terms of this Agreement. The parties agree that venue of any such suit is proper in the Court of Common Pleas of Richland County, South Carolina.
7. The rights and obligations of the parties under this Agreement may not be sold, assigned or otherwise transferred.
8. Neither the Receiving Party nor its employees will export, directly or indirectly, any technical data acquired from Owing Party or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval, without first obtaining such license or approval.
9. To the extent that this agreement contemplates interface between Receiving Party's computer system(s) and the computer system(s) of Owing Party, the Receiving Party and its signatory employees (i.e. all Receiving Party employees to be given access to SCDMV applications and SCDMV's Phoenix System)

acknowledge that Receiving Party will have access to Owing Party's driver and registrant private information. The Receiving Party and all of its signatory employees certify that they will comply with all applicable Federal and State statutes and regulations pertaining to personal information disseminated by the Department which include but are not limited to: the Federal Drivers' Privacy Protection Act; 18 U.S.C. §§ 2721 *et seq.*, §607 of the Federal Fair Credit Reporting Act, Public Law No. 91-508; Title VI of the Consumer Credit Protection Act; S.C. Release of Licensing And Registration Information laws, *S.C. Code Ann.* §§ 56-3-510 to -540; the S.C. Freedom of Information Act, *S.C. Code Ann.* §§30-4-160, *et seq.*; and the S.C. Family Privacy Protection Act (FPPA), *S.C. Code Ann.* §§30-2-10 *et seq.*

10. Receiving Party agrees to protect the Owing Party's private information and data Receiving Party has access to under this agreement from breach or from unauthorized use by Receiving Party's employees, contractors, agents or representatives. In like manner, Receiving Party likewise agrees to protect the Owing Party's private information and data Receiving Party may have previously received prior to entering this agreement. "Private information" as used in this agreement, shall have the meaning of that term as defined in the laws listed in paragraph 9., above, or any of them.
11. The Receiving Party shall indemnify the Department 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 Receiving Party with respect to or as a result of the Receiving Party's failure to abide by the terms of this Agreement, or for failing to protect the Owing Party's private information from breach, including, without limitation, reasonable attorney fees, and all other costs of defending any such action or claim. For purposes of this paragraph, "Receiving Party" shall be deemed include any and all employees or persons given access to Owing Party's data or information by Receiving Party, and any such employees or persons access to Owing Part's data or information or such employees' or persons' actions involving Owing Party's data or information shall be conclusively presumed to be within the employee's or person's scope of employment with the Receiving Party.
12. Receiving Party agrees to notify the Owing Party immediately, in writing (by email or fax as shown below) of any breach of its system that will or may impact the integrity of the Owing Party's data or information. In no case shall such notice be provided later than 5:00 pm Eastern Standard, or Eastern Daylight time (as applicable) of any business day after the breach is discovered. The Receiving Party may advise of the breach by telephone but notice will not be deemed made unless provided in writing as stated in this paragraph.
13. This Agreement is binding upon both parties and upon the directors, officers, employees and agents of each. The Receiving Party will disclose information only to those employees who have a need to know the information in furtherance of the purpose and who are bound by written confidentiality obligations no less restrictive than those contained in this agreement. The Receiving party shall be responsible for any breach of this Agreement made by any such employees as if Receiving Party itself had committed such breach. Provisions regarding the protection of

privacy apply to all signatories. This Agreement is effective as of the later date of execution and will automatically expire one year from the date of final execution or on that date in any succeeding year in which it has not been renewed by mutual written agreement, unless it is otherwise terminated on thirty (30) days written notice by either party. Receiving Party's obligations of confidentiality and restrictions on use of the Information disclosed by Owning Party, however, shall survive termination of this Agreement.

14. Data provided by the SCDMV may contain customer PII. If \_\_\_\_\_ has any reason to believe that SCDMV data was accessed, disclosed, acquired without proper authorization or that SCDMV data has been in any way compromised, \_\_\_\_\_ will alert the SCDMV immediately.

\_\_\_\_\_ agrees to provide and document security awareness training for all employees/personnel with access to SCDMV 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 passwords and accounts providing access to the SCDMV data. Emphasis will be placed upon the use of strong, non-dictionary passwords containing a combination of at least eight upper and lower case letters, at least one special character and at least one number. Emphasis must be placed upon not sharing passwords.

## **Security**

1. SCDMV Data at rest must be encrypted.
2. Ensure SCDMV data is transferred over secure channels and that all data in transport is encrypted.
3. User must determine in conjunction with SCDMV the best way to transfer data between the Department and the User.
4. Users must provide initial new employee and thereafter annual security awareness training to all employees (including contractors) who access SCDMV equipment, the data network, or SCDMV data, and provide documentation of that training to SCDMV upon request. Training must stress protecting passphrases and accounts providing access to the SCDMV data. Emphasis will be placed upon the use of strong passphrases containing a combination of at least fifteen characters which consist of upper and lower case letters, at least one special character and at least one number. Emphasis must be placed upon not sharing passphrases.
5. All user or contractor employees requiring access to SCDMV equipment, SCDMV networks, or data must individually sign a SCDMV non-disclosure agreement (NDA) before being granted access. Individuals are required to sign a new NDA annually or any time at the discretion of the SCDMV. Furthermore, all user or contractor employees must sign a SCDMV NDA upon removal of access rights. If the user or contractor has an internally administered NDA acceptable to the SCDMV, an

executive with signature authority for the user/contractor may sign the SCDMV NDA for the user/contractor organization.

6. In the event of a security related incident that impacts or may impact SCDMV equipment, the SCDMV data network or SCDMV data, the user must notify SCDMV within twenty-four hours after initially discovering the incident. The user will provide SCDMV a written detailed explanation of the incident including any SCDMV exposure, incident mitigation, and the corrective actions taken within seventy-two hours of initial discovery of the incident. Initial notification may be telephonically to the SCDMV point of contact followed by the written explanation with seventy-two hours. SCDMV reserves the right to request the offending individual(s) be removed from the SCDMV account.
7. All Contractor employees requiring remote access to the SCDMV network will complete a VPN request in accordance with SCDMV policy.
8. Data provided by the SCDMV may contain customer personally identifiable information (PII). If at any time the user has any reason to believe that PII contained in SCDMV data has been accessed, disclosed, acquired without proper authorization or that SCDMV data has been in any way compromised, user will alert the SCDMV telephonically within twenty-four hours of initial discovery of the incident followed up by a written detailed explanation within seventy-two hours. The explanation must include details specific to any PII that was, potentially may have been, or potentially may yet be compromised, incident mitigation, and corrective actions taken to protect PII against unauthorized access, use, or disclosure.

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## South Carolina Department of Motor Vehicles

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Authorized Agency Representative and Title

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Date

The notice address of the SCDMV 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

### ELT Service Provider

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Authorized Representative (print name and title)

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Authorized Representative (signature)

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Date

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Taxpayer Identification Number or Federal Employee Identification Number

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Provider's Street Address of Principal Place of Business