

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES

**ELECTRONIC LIEN AND TITLE PROGRAM
LENDER OR BUSINESS PARTNER CONTRACT**

This Contract is between the South Carolina Department of Motor Vehicles, hereinafter referred to as the DMV, and _____, the Lender or Business Partner (also "User"). This contractual period will begin on the date it has been signed by both parties and shall remain in effect until termination by either party.

WHEREAS, the DMV has established a program, Electronic Lien and Title (ELT) Program which will allow the User through an approved Service 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 User will or may have entered into an agreement with an approved Service Provider to enable the Participating User to provide ELT services; and,

WHEREAS, the DMV established the ELT Business Rules and Program Standards for the operation of the ELT program, which includes all relevant rules, regulations and procedures established by the DMV; and,

WHEREAS, the Provider shall use a computerized interface which shall allow any applicable approved User to provide the following services: Lien Notification from DMV to User, 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, and

WHEREAS, the Provider desires to obtain certain information collected and stored by the Department in its normal course of business from the Department for only the purposes stated in the **INFORMATION RELEASE AGREEMENT**, entered into by the Provider and the Department, incorporated herein verbatim; and

WHEREAS, some, if not all, of the desired information is of a personal nature, which the Provider and User understands to mean any information that identifies or describes an individual including, but not limited to, an individual's name, home address (excluding zip code), date of birth, driver identification number, customer number, height, weight, race, and other physical details; and

WHEREAS, the Department's disclosure of such information to the Provider must be made in accordance with the Driver Privacy Protection Act of 1994, hereinafter DPPA, codified at 18 U. S. C. §§ 2721 *et seq.*; and privacy provisions enacted by the State of South Carolina, S. C. Code Ann. §§56-3-510 to -540 and §§30-4-160 and -165; and

WHEREAS, the Department will or may also disclose certain additional information to Provider which is confidential or restricted, including but not limited to computer hardware or software, computer system architecture, intellectual property, trade secrets, copyrighted material, trademarks or service marks or data pertaining to any of them. The terms "confidential

information,” “multi-factor authentication” and “restricted information” as used in this Contract shall have the meanings attributed to them in the South Carolina Department of Administration’s Information Security Policy on Data Protection and Privacy, 1.1 Data Classification. Specifically, those terms shall have the following meanings:

Confidential Information: Sensitive information that is used or held by the agency. Considerable loss or harm could occur as a result of unauthorized access, use, or disclosure of this information.

Multifactor authentication - System authentication using two or more factors to achieve authentication, such as (i) knowledge - something you know (e.g., password, passphrase or PIN), (ii) possession - something you have (e.g., token), (iii) inherence - something you are (e.g., biometric). The Department requires Authenticator Assurance Level 2 (AAL2) or higher as defined in National Institute of Standards and Technology (NIST) SP 800-63b, section 4.2.

Restricted Information: Highly sensitive information that is used or held by the agency. Statutory or regulatory penalties, notification provisions, or other mandates could result if the information is accessed, used or disclosed in an unauthorized manner.

And

WHEREAS, subject to the Provider’s certification of its compliance with all applicable statutes and regulations and to the Provider’s execution of and compliance with the aforementioned **INFORMATION RELEASE AGREEMENT**, the Department will provide requested information to the Provider subject to the conditions set forth herein.

1. RESPONSIBILITIES OF THE USER

The User shall abide by the ELT Business Rules and Program Standards and more specifically agrees:

- A. To enter into an agreement with a DMV approved service provider if not establishing their own proprietary computerized interface.
- B. To attend, and have all Authorized Individual Users attend the required Provider training for ELT.
- C. To bear all costs for participation in the program such as costs incurred for computer hardware, labor, electronic interface system changes, and transaction processing.
- D. To contact the DMV’s Information Technology Office, herein referred to as ITO, at 803.896.0579 immediately upon discovering that the DMV has sent to the User by electronic or any other means ELT data or records intended or appearing to have been intended to have been sent to another entity. Notwithstanding any other time limits set forth herein, the DMV may terminate this Contract by written notice to the User for failure to immediately report such error to the DMV, such notice to be effective 5 (five) days after mailing or upon facsimile (FAX) transmission by the DMV.
- E. To obtain written permission from each registered owner prior to submitting a change of address to the DMV and further agrees that each submission of a change of address shall be deemed the User’s certification that written permission was obtained in accordance with this provision.

- F. To assume full responsibility for the accuracy of electronic lien satisfaction submitted to the DMV, and hold the DMV harmless for any damage or loss, if any, from issuing a title based upon such electronic lien satisfaction. Certificate of Title fees will be required when an electronic lien and title is established and, in some cases, when the title record is modified or corrected.
- G. To 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 User may use the electronic mailbox or web transaction to complete the following transactions:

- a. Lien Notification from the DMV to lienholder;
- b. Lien Release Due to Error;
- c. Change Owner Address by Lienholder;
- d. Release Lien with 'Mail to' Address;
- e. Request Printed Title;
- f. Expedite electronic lien release.

The User will pay to DMV an additional \$2.50 fee associated with transmittal and receipt of the lien and title data. The aforementioned fee must be paid daily to DMV via ACH on the next day after the lien batch is transmitted. The User is responsible for submitting payment to the Provider who will submit payment to DMV via ACH. DMV transactions that may result in a lien notification message include electronic lien recording, conversions of paper titles to ELT and title corrections (subsequent lien notifications transmitted). Additional information regarding fees and transaction descriptions are included in the ELT Program Standards. As a preferred business practice, a Lender will be required to release all electronic liens using the ELT computerized interface. However, should technical issues arise preventing such process, then DMV will agree to make provisions for release of lien by receipt of written notice of lien satisfaction from the User.

Access to and use of DMV data by any User shall be solely for fulfilling the purposes of this Contract and the completion of ELT transactions.

2. AGREEMENT OF THE DMV

DMV agrees to make available to User's contracted Service Provider and Users direct on-line access to DMV data as required to execute ELT transactions at an agreed upon cost. 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. For the purposes of this Contract, "DMV data" means vehicle registration, vehicle title, and customer identity records of the DMV maintained in the DMV database and data storage systems.

3. AUTHORIZED USERS

The User shall limit network access to those individual employees who have been designated as authorized users and who have executed training with any Provider on DMV expectations of Duty of Non-Disclosure and Due Diligence. Accordingly, authorized users will be required annually to submit a signed and witnessed DMV ELT Data User Acknowledgment of Duty of Non-Disclosure and Due Diligence (also "User Acknowledgment") Form to the Provider for records. The DMV ELT User Acknowledgment Forms will be subject to audit, quality assessment, and/or inspection upon demand by DMV or authorized agents of the State of South Carolina. In addition, the Lender or Business partner must submit, with executive level representative signature, a DMV Information Release Agreement (IRA).

4. INDEMNIFICATION AND LIMITATION OF LIABILITY

The DMV shall not be responsible for any error or transmission of inaccurate information by the User or any Provider of the User resulting in erroneous release or satisfaction of lien by the DMV or by the motor vehicle authority of any other jurisdiction; nor shall DMV be responsible for any charges (transaction fees) due to inaccurate information by the User or any Provider of the User.

The User 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 User with respect to or as a result of the User's or its agents', employees' or representatives' failure to abide by the terms of this Contract, including ELT Business Rules and Program Standards, or failure to comply with the applicable privacy laws set forth in 5 and 6. below, including, without limitation, reasonable attorneys' fees and all other costs of defending any such action or claim, unless a court with jurisdiction determines that DMV or its employees, agents or representatives are at fault for the violation of law or this Contract. The User shall be liable for and shall indemnify and hold harmless the DMV for any misuse or misappropriation of any vehicle record or related information obtained from the DMV in connection with this Contract. Further, the User shall be liable for failure to safeguard and limit access to DMV data as required herein or for any damages resulting from the acts or omissions of the User or its personnel relating to the processing of ELT services.

5. INFORMATION ACCESS

The DMV shall allow the User only such access to DMV data as necessary to provide services associated with the ELT program. Such access is limited to that information needed by the User in the conduct of its business as a DMV ELT User.

The User shall not sell, impart, or disclose to any person, firm or corporation any information obtained from DMV data or records, including listings of individuals, for any reason. Information obtained through such access is subject to the restrictions upon use and dissemination imposed by the S. C. Freedom of Information Act in *S.C. Code 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 or dissemination of any information obtained from DMV records or files. By signing this Contract, the User warrants that the signatory and all Authorized Individual Users are familiar with and shall abide by all provisions of the laws set forth in this paragraph. The User shall keep a record for a period of five years of person(s) to whom the information was re-disclosed and the purpose for which the information was to be used. The User shall make records available to the DMV upon request.

6. CONFIDENTIALITY AND SECURITY

- (A) The User shall be responsible for safeguarding the automated equipment, which provides access to the ELT network and limit access to those persons who are individual Authorized Users of the network and who have been properly instructed as to their duties and responsibilities as individual Authorized Users under this Contract.

By signing this Contract, the User warrants that the signatory and all authorized participating personnel are familiar with and shall abide by all provisions of the Federal laws affecting access to and use of computer information to include, but are not limited to, the following: 15 U.S.C. § 271, 40 U.S.C. § 759

(Computer Security Act of 1987); 23 U.S.C. §§ 401 (National Driver Register Act); *et seq.*; 5 U.S.C. §§ 552a (Privacy Act of 1974) *et seq.*; 18 U.S.C. §§ *et seq.* 1001 Computer Fraud and Abuse Act of 1986) § 17 U.S.C. § §109 *et seq.* (Computer Software Rental Amendments Act of 1990); and 15 U.S.C. §§ 1681 *et seq.* (Fair Credit Reporting Act).

This Contract is specifically subject to the Driver Privacy Protection Act, 18 U.S.C. § 2721 *et seq.*, and *S. C. Code Ann.* §§ 30-4-160 and -165 and User certifies that all personal information and vehicle information which is considered privileged and confidential under state and federal law and is contained in any title information forwarded to the User under this Contract will not be released by the User to any individual or other legal entity who would not otherwise have access to such information. Any release of information by the User to any unauthorized individual or other legal entity will result in the DMV terminating this Contract and the User will hold the DMV harmless for any resulting damage or loss. Notwithstanding any other time limits herein, the DMV may terminate this Contract for such unauthorized use or disclosure by written notice to the User, such notice to be effective upon facsimile (FAX) transmission to the User or five (5) days from the date of mailing of such notice.

User 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 spaces, upper and lower case letters, at least one special character and at least one number. Emphasis must be placed upon not sharing passphrases. Passphrases must be used in lieu of passwords. Service accounts and Windows Administrator's passphrases must contain a combination of at least twenty characters to include spaces, upper and lower case letters, at least one special character and at least one number. In most cases, enforcement of passphrases will be a combination of system coding/ policies and personnel training provided by the Provider.

(B) Security.

1. Storage: DMV data shall not transit nor be stored (temporarily or permanently stored) in a public cloud environment. Private clouds may be owned, managed, and operated by the organization, a third party, or some combination of them, and it may exist on or off premises.
2. Encryption: SCDMV data at rest must use AES (Advanced Encryption Standard) encryption. SCDMV data in transit must be encrypted. Data is transferred over secure channels and that all data in transit is encrypted.
3. Authentication: Individual Users must acknowledge and use current best practice multifactor authentication procedures per NIST SP 800-63B to access devices and systems which access, use or store DMV data, whenever possible. If the lender is acting as a service provider, and does not currently use multifactor authentication procedures, the lender must provide a plan to the DMV that explains how they will address the requirement in the future. The plan must be provided within ninety (90) days of the execution of this agreement. Passphrases must be used in lieu of passwords and passphrases must contain at least fifteen characters. Passphrases for Service Accounts and Windows Administrators must contain a combination of at least twenty characters.
4. Security Awareness Training: User must administer and document initial new employee security awareness training and thereafter, annual security awareness training to all employees (including contractors) who access DMV equipment, the DMV data network, or DMV data, and provide the documentation of the training to the service provider for their records to be accessible to DMV

upon request. Training must stress protecting accounts and devices providing access to the DMV data. Training must include, but not be limited to, protecting credentials, ransomware, phishing attacks and how to reporting an incident. Security awareness training materials will be created by the service provider. Training management may be delegated to the User entity at service provider's discretion.

5. Security Awareness Training Program: A User may utilize its own security awareness training if a training program or mandate otherwise exists for the industry or company policy compliance. If the User does not have its own security awareness training, then the User must utilize the security awareness training material provided by the ELT service provider.
 - a. All individual Users (i.e. full time/part time employees, temporary personnel and contractors) requiring access to DMV equipment, DMV networks, or data must individually sign a DMV ELT User Acknowledgment before being granted access. Individuals are required to sign a new ELT User Acknowledgment annually to re-certify security awareness training or any time at the discretion of the DMV; signature requirement effective with implementation and distribution of the service provider's or User's training solution.
6. Incident Notification: Data provided by the DMV may contain customer personally identifiable information (PII). In the event of a security related incident that impacts or may impact DMV equipment, the DMV data network or DMV data, or if the User has any reason to believe that DMV data may have been accessed, disclosed or acquired without proper authorization, or that DMV data may have been in any way compromised, the User must notify DMV as soon as possible but in any case within twenty-four hours after initially discovering the incident. The User will provide DMV a written detailed explanation of the incident including any DMV 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 DMV point of contact followed by the written explanation within seventy-two hours. DMV reserves the right to request the offending individual(s) be removed from the DMV account.
7. The data security requirements apply to all persons/entities accessing DMV data.

7. NOTICE

Any notice given pursuant to this Contract must be in writing. Notice is determined by the earlier of the time notice is actually received by the addressee or five business days after the mailing of the notice to the DMV Director or User at the address of the respective signatory. Notice may also be complete by an emailed or facsimile acknowledgment by a party to this agreement.

8. CHOICE OF LAW

This Contract was made and entered in and 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 thereunder. In the event of litigation involving this Contract, User will not object to jurisdiction and venue in the Court of Common Pleas of Richland County or the U. S. District Court for the District of South Carolina, Columbia Division.

9. TERMINATION

- (A) This Contract is subject to the right of either party to terminate the contractual agreement at any time without cause by giving the other party at least thirty calendar days prior written notice of such termination at the addresses specified below. Notice is effective from the date sent by facsimile (FAX) transmission or, if served by mail, five days from the date of mailing.

If the DMV decides to terminate the ELT concept, all ELT records of ownership shall have a paper title produced and delivered or mailed to the User without cost.

If the User decides to terminate its participation in this process or if the DMV terminates this Contract for cause and paper titles are requested, the DMV will print, deliver or mail such titles to the User. If DMV should terminate this Contract for any cause and paper titles are requested, the DMV will print and mail such titles to the User without cost. If the User terminates its participation in this process, such termination may limit or cease ability to the User to conduct transactions with the DMV User must request paper titles and pay postage cost to receive the printed title.

If the User sells, assigns or otherwise transfers ELT Titles to another financial institution, the transaction must comply with the provisions of *S.C. Code Ann.* Title 56, Chapter 19. Said transfer must be submitted to DMV on the proper forms and be accompanied by all required fees.

The DMV will immediately suspend or terminate the access privileges of the User without a hearing upon the User's breach of, or failure to fulfill any responsibility established pursuant to this Contract, or ELT Business Rules and Program Standards.

If DMV determines to its own satisfaction that the User has either misused or knowingly allowed the misuse of the information, 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 User 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 by statute or regulation.

This Contract is subject to change due to the issuance of court orders, or changes in State and/or Federal laws, rules, and regulations governing access and use of personal information. If court orders are issued or if the laws, rules, or regulations change such that the terms of this Contract cannot be fulfilled, the Contract will be automatically and immediately terminated and the User will forward all unpaid fees due and owed to the DMV in the manner prescribed for payment transaction as provided in the executed Contract between the User and the Provider.

If this Contract between the DMV and User is suspended or terminated, the User participation in the ELT program will be correspondingly suspended or terminated.

(B) Suspension or Termination of Service Provider

If the contractual agreement between the DMV and User's Service Provider is suspended or terminated, the User's data access capabilities in the ELT program will be inconvenienced or terminated. If terminated, the User will be required to obtain a new Service Provider to continue participation in the ELT Program.

If the User's Service Provider is suspended, the User will temporarily be unable to receive new lien notifications and may be unable to electronically manage the liens.

If the Provider has received three suspensions upon their ELT Provider Account within a calendar year, then DMV will terminate this contract. Once an ELT Provider is terminated, there is no option for re-entry. The Provider is responsible for notifying its Users of its suspension or termination status and must make payment of past due service fees upon its ELT Provider Account. Suspension or termination of the Provider's participation may limit or prevent the ability of Users to conduct transactions with the DMV. In the event of a suspension or termination of the Provider, DMV agrees to make limited accommodations to assist the Users as such detailed in the ELT Program Standards.

10. MODIFICATION OF THIS CONTRACT

This Contract is subject to restrictions, limitations or conditions enacted by the South Carolina Legislature, which may affect any or all terms or provisions of this contract in any manner. User agrees that upon written notice from the DMV of any such restrictions, limitations or conditions as may be enacted by the South Carolina Legislature, that notification will constitute a modification or amendment to this contract until such time as they are put in writing and duly executed by each party's authorized official as required herein. The DMV will advise the User of any such actions taken by the South Carolina Legislature as soon as possible, but lack of notification by the DMV does not negate the legal requirement to comply with all applicable provisions of law. The User may immediately terminate this contract if it decides not to comply with the modifications or amendments to this contract. However, such termination may limit the ability of the User to conduct transactions with the DMV. Except as stated in this paragraph, no alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or contract not incorporated herein shall be binding on either party.

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

This Contract is not assignable by the User, either in whole or in part, without the written consent of the DMV.

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.

Lender/Business Partner Name _____ Account # _____

For notice purposes under this contract, the notice address for the User is:

Lender/Business Partner: _____
Attention: _____
Address: _____

Telephone: _____

The notice address of the DMV is:

South Carolina Department of Motor Vehicles
Attention: Director of Administration
Post Office Box 1498
Blythewood, South Carolina 29016
Email: Procurement@scdmv.net
Telephone: 803.896.9661
FAX: 803.896.3855

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

LENDER/BUSINESS PARTNER _____

Lender/Business Partner Name

Authorized Representative (*print name and title*)

Authorized Representative (*signature*)

Date

Taxpayer Identification Number or Federal Employee Identification Number

DEPARTMENT OF MOTOR VEHICLES

Director of Administration

Date