

**SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES**

ELECTRONIC LIEN AND TITLE (ELT) 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. 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 lenders, 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 the approved participating Lenders who are desirous of providing ELT services; and,

WHEREAS, the Provider's shall use a computerized interface which shall allow any applicable approved participating Lender 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 and Program Standards are hereby incorporated herein as though repeated verbatim.

The Provider shall monitor any applicable Participating Lenders' 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 Lenders and Authorized Users.

The Provider shall deposit, through the electronic network, all monies owed to the DMV and/or collected by any approved Participating Lender to the credit of the

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DMV with the Treasurer of the State of South Carolina through Wachovia Bank 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 be responsible for all uncollected funds resulting from transactions processed by it as an ELT service provider and shall reimburse the DMV for any such uncollected funds, *provided*, however, Provider will have no responsibility for collection of funds by other parties if Provider does not collect funds directly.

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 agreement.

The provider shall be entitled to charge any applicable Participating Lenders 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 Lenders.

2. AGREEMENTS OF DMV

DMV agrees to make available to Provider and Participating Lenders access to Vehicle Records to allow Provider to provide Participating Lenders with ELT transactions at an agreed upon cost. Access to Vehicle Records by Provider, and by Provider to Participating Lenders, 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 Records" means the vehicle title and customer records of DMV maintained on the DMV computerized system.

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

DMV agrees that the Provider, in providing ELT transactions, 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.].

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3. ACCURACY OF DATA TRANSMISSION

Provided that the Provider did not make any changes to the information received or transmitted, nothing in this Agreement 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 records, including listings of individual, 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 Agreement, 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 South Carolina's Freedom of Information Act of 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. 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 attorneys fees and all other costs of defending any such action or claim.

Except with respect to its obligations set forth in 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

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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 agreement, 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 Lender of any vehicle record obtained from DMV, or any other act or omission of a Participating Lender, including, without limitation, any Participating Lender's failure to abide by the Business Rules and 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 Lender 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 automated equipment, which provides access to the automated network for approved Participating Lenders, 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 automated 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 Agreement, the Provider warrants that the signatory and all of its authorized participating personnel are familiar with and shall abide by all

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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; 40 U.S.C.S. §759 (Computer Security Act of 1987); 23 U.S.C.S. §401 (National Driver Register Act); 5 U.S.C.S. §552 (Freedom of Information 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).

(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 Agreement, 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

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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 Agreement must be in writing. Notice is determined by the lesser 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 Agreement 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 Agreement, including, but not limited to, all questions concerning the validity of this Agreement, 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 without a hearing upon the Provider's breach of, or failure to fulfill, any responsibility established pursuant to this Contract, Business Rules and Program Standards.

If DMV determines to its own satisfaction that the Provider has either misused or knowingly allowed the misuse of the Vehicle Record Information or Customer information, the DMV may in addition to other penalties provided by law:

- (a) Terminate this agreement immediately,
- (b) Require the return of all files and media containing information provided by the DMV,
- (c) Hold the Provider 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.

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

10. MODIFICATION OF THIS AGREEMENT

This agreement is subject to change and modification due to changes in the DMV's policies, the issuance of court orders, or changes in State and/or Federal laws, rules, and regulations. If the DMV changes its policies, if court orders are issued, or if the laws, rules or regulations change such that the terms of this agreement 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 Agreement.

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

11. MISCELLANEOUS

This Agreement 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.

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

Provider: _____

Attention: _____

Address: _____

Telephone: _____

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

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

PROVIDER

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

DEPARTMENT OF MOTOR VEHICLES

Marcia S. Adams, Executive Director

Date

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