

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES ELECTRONIC VEHICLE REGISTRATION (EVR) 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 SCDMV. 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, as provided for in Sections 10 and 11 of this contract.

WHEREAS, SCDMV has established a program, ELECTRONIC VEHICLE REGISTRATION (EVR), which will allow South Carolina Participating Dealers or Third Party Participants, through the Provider, to apply for titles and registration documents for their customers. and,

WHEREAS, the Provider shall use a computerized interface which shall allow an approved Participating Dealer or Third Party Participant to provide their customers the following services: receiving applications for the title and registration of a motor vehicle; requesting motor vehicle license plates and/or decals on the customers' behalves, to be mailed to the customers. The validity of the requested transactions are subject to receipt by SCDMV of all fees, taxes, penalties and other monies due by SCDMV for forwarding to SCDMV, subject to the conditions hereinafter set forth.

1. RESPONSIBILITIES OF THE PROVIDER

SCDMV Administration has established Program Standards for the operation of the EVR program and standards for approved Participating Dealers and Third Party Participants. The Program Standards are hereby incorporated herein as though repeated verbatim.

The Provider shall monitor Participating Dealer and/or Third Party Participants performance in accordance with the Program Standards and immediately report any discrepancies or violations to SCDMV.

The Provider shall provide the requisite training to the Participating Dealers, Third Party Participants, and their Authorized Users, in addition to any training required by the SCDMV.

The Provider shall attend any training or workshops required by SCDMV.

In exchange for access to SCDMV data, as described in 2., below, the Provider agrees to pay to SCDMV the amount of \$2.50 fee per each completed update to complete a transaction define as Update Phase 2 (UPD2). A transaction is defined as each transaction for which the Participating Dealer or Third Party Participant performs an Update 1 and an Update 2 to fulfill the transaction transmission.

The Provider shall deposit, through the electronic network, all monies owed to SCDMV and collected by the approved Participating Dealers and Third Party Participant to the credit of SCDMV with the Treasurer of the State of South Carolina through SCDMV designated bank or financial institution.

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

The Provider shall receive, securely store, account for, and be fully responsible for such items of value as may be entrusted to the Provider by SCDMV. In general, the Provider will not handle inventory but will facilitate direct delivery of inventory from SCDMV. The Parties to this contract recognize, however, that there may be specific instances, such as leasing company businesses, which routinely sell from their fleets to third party purchasers, in which

it may become necessary for Provider to acquire and maintain inventory such as license plates, registration certificates and year decals. If Provider engages in such business arrangements, items of inventory will be subject to the requirements of this paragraph and Provider will be responsible for such items. Such inventory will likewise be subject to the bonding provisions of Section 6., below.

The Provider shall be responsible for all uncollected funds resulting from transactions processed by it as an EVR service provider and shall reimburse SCDMV for any such uncollected funds.

The Provider shall be entitled to charge Participating Dealers and Third Party Participant monthly participation fees, standard transaction inquiry and transaction fees and such other fees for the use of EVR and transfer of fees and other monies to SCDMV or others as may be provided for in its agreements with Participating Dealers and Third Party Participants.

THE PROVIDER ONLY MAKES THE WARRANTIES EXPRESSLY CONTAINED IN THIS CONTRACT AND DISCLAIMS ALL OTHER WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2. AGREEMENTS OF SCDMV

SCDMV agrees to make available to Provider, Participating Dealers and Third Party Participant direct on-line access to Vehicle data to allow Providers to provide Participating Dealers and Third party Participants with EVR services. Access to SCDMV Vehicle Data by Provider, and by Provider to Participating Dealers and Third Party Participant pursuant to this section shall be solely for fulfilling the purposing of this Contract. SCDMV warrants that it has all necessary statutory authority to grant such access and to allow for the provision of EVR in the state of South Carolina. "Vehicle Data" means the vehicle registration, vehicle title, and customer records of SCDMV maintained in the SCDMV database and data storage systems.

The access to and use of SCDMV Vehicle Data by Provider, and Participating Dealers, and Third Party Participants is limited to the completion of EVR transactions, as specified in the Program Standards.

SCDMV agrees that the Provider, in providing EVR services when acting within the scope of this contract and the Program Standards as they may amended from time to time is acting on behalf of SCDMV in carrying out a function of SCDMV [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. RETENTION OF RECORDS

The Provider shall maintain and retain all records and documents relating to an EVR transaction for five years from the time it takes place and shall make them available for inspection and audit by SCDMV and authorized representatives of the State, including the Procurement officer or designee, during normal business hours without advance notification.

5. INFORMATION ACCESS

The Provider shall not sell or impart to any person, firm or corporation any information obtained from SCDMV 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 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 SCDMV Policy on access to records or any successor laws or regulations adopted by the State of South Carolina or SCDMV with regard to disclosure or dissemination of any information obtained from SCDMV 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 a record 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 record available to SCDMV upon request.

6. LIABILITY AND LIMITATION OF LIABILITY

The Provider shall indemnify SCDMV 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 otherwise set forth in this Section and Section 5 hereof and except for the damages caused by the intentional misconduct of the Provider, the Provider's total liability in any event for monetary damages suffered by SCDMV, including without limitation, any indirect, special, incidental, or consequential damages resulting from the loss of data, SCDMV'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 SCDMV of funds collected by Provider and not yet remitted for transactions that have been completed and for uncollected funds as described in Section 1., above. Without limiting the foregoing in any way, the Provider shall not have any liability to SCDMV for any claims, losses, damages, judgments, liabilities or similar costs and expenses resulting directly or indirectly from the misappropriation or misuse by a Participating Dealer or Third Party Participant for any vehicle record obtained from SCDMV, or any other act or omission of a Participating Dealer or Third Party Participant, including, without limitation, any Participating Dealer's or Third Party Participant'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 the Participating Dealer or Third Party Participant wrongdoing and immediately reported the suspicions and the results of any investigations to SCDMV.

The Provider shall provide and maintain a surety bond in the amount of one hundred thousand (\$100,000.00) dollars to cover all claims, losses, damages, judgment, liabilities, out of pocket costs or similar cost and expenses incurred by SCDMV owing to the loss, destruction of or Provider's inability to account for inventory as set forth in Section 1., above.

7. 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 Dealers and Third Party Participants and limit access to those persons who are authorized used 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 copies 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 SCDMV 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 including, but not limited to, the following: 15 U.S.C.S. §§ 2721 *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 Amendment Act of 1990); and 15 U.S.C.S. §1681 (Fair Credit Reporting Act).

Data provided by the SCDMV may contain customer PII. If the Provider 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, the Provider will alert the SCDMV immediately.

The Provider 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.

(b) By SCDMV. 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 EVR. These works are comprised of, among other things, those components of EVR necessary to collect, assemble and transmit to and from SCDMV the inquiries, information and fund transfers 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 EVR, 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 of reasonable efforts to preserve their secrecy.

SCDMV 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, 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 SCDMV previously not subject to a confidentiality or non-disclosure agreement, (iii) information which is independently developed by SCDMV outside this Contract, or (iv)

information which is rightly obtained by SCDMV from third parties. SCDMV will treat all plans, specifications, drawings, diagrams, software, computer programs, procedures, processes and other proprietary materials relating to EVR and the Provider's network as vendor proprietary information under the Provider's control for 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 SCDMV for court cost and attorney fees associated with defense of any legal action in which a third party seeks access to Provider's intellectual property.

8. 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 SCDMV Director or Provider at the addresses listed below.

9. 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.

10. TERMINATION

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

If SCDMV determines to its own satisfaction that the Provider or any of its Participating Dealers and Third Party Participants have either misused or knowingly allowed the misuse of SCDMV Data, SCDMV may, in addition to other penalties provided by law:

- a) Terminate this Contract immediately, without regard to written notice,
- b) Require the return of all files and media containing information provided by the Department,
- c) Hold the Provider or Participating Dealer or Third Party Participant 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 SCDMV or the State.

SCDMV may suspend or terminate all access privileges of the Provider, Participating Dealer or Third Party Participant without a hearing upon the Provider's or any Participating Dealer or Third Party Participant breach of or failure to fulfill any responsibility established pursuant to this Contract or the Program Standards as they may be amended from time to time.

11. MODIFICATION OF THIS CONTRACT

This Contract is subject to change and modification due to changes in the SCDMV's procedures, the issuance of court orders, or changes in state and/or federal laws, rules, and regulations. If the Department changes its procedures, 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 the Provider may, at its option, immediately terminate this Agreement.

This Contract can be modified by either party in any manner through mutual agreement. All changes to the Contract must be submitted through written amendment which has been executed by all parties.

This Contract anticipates periodic modifications of the security rules and edits noted above. This Contract will not need to be amended solely to accommodate such modifications.

IN WITNESS HEREOF, the parties hereto have caused these presents to be executed.

SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES

Address for notification:

South Carolina Department of Motor Vehicles
Director of Administration
Post Office Box 1498
Columbia, South Carolina 29216
Email: Procurement@scdmv.net
Telephone: 803.896.9661
Fax: 803.896.3855

(Signature)

Date

PROVIDER

Address for Provider:

Telephone: _____

Facsimile: _____

Authorized Representative (Print Name)

Authorized Representative (signature)

Date

Taxpayer Identification Number