



Electronic Lien and Title Program (ELT) Lienholder Agreement

Registry of Motor Vehicles
P.O. Box 55889 · Boston, MA 02205-5897

This agreement (“**Agreement**”) is made and entered into by and between the Massachusetts Department of Transportation, through its Registry of Motor Vehicles Division, (“**RMV**”), a body politic and corporate, and public instrumentality of the Commonwealth, established and operating pursuant to M.G.L. c. 6 Chapter and

Legal Business Name _____

DBA _____ (“**Lienholder**,” “**Party**” or “**Parties**” means the RMV or Lienholder (as the context indicates), if used in the singular, and both RMV and Lienholder if used in the plural.

I. Scope of Agreement

This Agreement, together with the Agreement for Access to Records and Data Maintained by the Registry of Motor Vehicles (“**Access Agreement**”), the ELT Business Specifications and the ELT Technical Specifications (collectively referred to as “**Program Specifications**”), as they may be amended from time to time, establish the obligations and responsibilities of the Lienholder and supersede all other prior written or oral agreements, permits, or understandings between the parties with respect to the subject matter thereof. The provisions of the Program Specifications are hereby incorporated by reference into this Agreement.

In the event there is a conflict between the terms of this Agreement and the terms of the Program Specifications, the terms of this Agreement shall control; provided however that the existence of additional or more specific requirements in the Program Specifications shall not be considered a conflict; and to the extent performance of the requirements of both the Agreement and the Program Specifications is reasonably possible, no conflict shall be deemed to exist. In the event of a conflict between the terms of this Agreement and the Access Agreement, the terms of this Agreement shall take precedence with respect to any ELT services performed pursuant to this Agreement; provided however that to the extent performance of the requirements of both this Agreement and the Access Agreement is reasonably possible, no conflict shall be deemed to exist.

II. Definitions

All capitalized terms used in this Agreement, but not otherwise defined, shall have the following meanings:

1. “**Lienholder**” shall mean the lender that has contracted with a Service Provider and is the signatory to this Agreement.
2. “**Individual ELT Participants**” shall mean those employees or agents of a Lienholder who process ELT Program transactions on behalf of the Lienholder.
3. “**Program Specifications**” shall mean RMV published ELT Technical and Business Manuals and Service Provider Business Specifications and any other documentation that outlines the detailed requirements for the ELT Program.
4. “**Service Provider**” shall mean the entity that, based on the Program Specifications, is authorized to directly interface with the RMV to process ELT transactions.
5. “**Requestor**” shall mean the Lienholder for purposes of this Agreement and the Access Agreement;

III. Terms

Subject to earlier termination pursuant to Section XI, this Agreement shall be in effect for three (3) years from the date of its execution by the Lienholder, and may be renewed for additional three year periods upon notification from the RMV. The RMV will notify the Lienholder thirty (30) day period prior to the expiration of this Agreement via the Lienholder’s email, as provided. If the Lienholder does not renew its Agreement prior to its expiration date, all access will terminate on that date. However, nothing herein contained obligates the RMV to so extend the Agreement, nor limits the rights of the RMV to terminate this Agreement at its sole discretion.

1. Access Agreement

The Lienholder certifies that it has executed an Access Agreement, the provisions of which are hereby expressly incorporated by reference herein.

2. Limited Authority

The Lienholder will act under limited authority from the RMV to perform the functions described in this Agreement. The Lienholder shall not hold itself out as having authority from the RMV for any purpose other than processing lien release transactions. The Lienholder further acknowledges that it has no authority, either express or implied, to bind the RMV or to incur any obligation on behalf of the RMV.

3. Network Requirement

- a. Lienholder shall enter into and maintain an agreement with a Service Provider approved by the RMV for participation in its ELT program to enable Lienholder to record and release liens with the RMV electronically. This Agreement shall not take effect until such an agreement with an approved provider has been executed by Lienholder.
- b. Lienholder certifies that it has reviewed and understands the content of the RMV's ELT Program Service Provider Agreement between the RMV and its Service Provider, a copy of which is attached as The Service Provider Agreement.
- c. Lienholder shall bear all costs associated with the ELT Program, including but not limited to, costs associated with its computer hardware, labor, electronic interface system charges, and network charges.

IV. Business Requirements

1. Licensing

Lienholder must show proof that it is a valid lender before becoming a participant in the ELT Program. Proof may be defined as having a National Mortgage Lender System (NMLS) membership number, a National Credit Union Association (NCUA) membership number, a valid lender's license from the Massachusetts Division of Banks or any other state/jurisdiction, or any other proof deemed acceptable by the RMV.

2. ELT Transaction Types:

The electronic mail box may be used to complete the following transactions, and such additional transactions that may be made available by RMV in the future:

- a. Send and Receive Title Lien Notifications
- b. Remove a lien and release the title to the registered owner
- c. Request a Paper Title to be Printed and mailed
- d. Send error messages
- e. Request a Paper Title to be printed and mailed to a specified address that is not the address of the registered owner(s)
- f. Title Amendments generated by the RMV
- g. General Registration and Title Inquiry
- h. Other mutually agreed to transactions in support of the ELT Program

3. Lien Notification Process

After the close of business on each RMV business day, the RMV will produce and send electronically to the Lienholder's designated Service Provider, all vehicles titled during that day wherein the ELT Lienholder was recorded as the lienholder. Lienholder will acknowledge receipt of said transmission in a manner consistent with the requirements of the Program Specifications.

4. Change of Service Provider

Should the Lienholder elect to change its current Service Provider, it shall notify the RMV in writing of its intent at least thirty (30) days in advance of the change.

5. Electronic Title Information

The RMV and Lienholder agree that the electronic delivery of a title, as set forth in the Program Specifications, meets the requirements of Massachusetts General Laws Chapter 90D.

6. Release of Lien

Once the lien has been satisfied, the ELT Lienholder shall notify the RMV to release the Certificate of Title within three (3) business days. Upon receipt of such notice, the RMV will print the Certificate of Title on secure paper and mail said Certificate of Title to the registered vehicle owner at the address in the RMV's database, or to another address designated by the ELT Lienholder. The ELT Lienholder will hold the RMV harmless for any resulting damage or loss due to the ELT Lienholder's failure to notify the RMV to mail the Certificate of Title to an address other than that of the registered owner.

7. Termination of Participation

If the Lienholder terminates its participation in the ELT program, or if RMV terminates this Agreement, whether for cause or for convenience, or if the Lienholder sells or otherwise transfers ELT liens to another party and as a result the Lienholder requests paper titles, the Lienholder shall be responsible for all costs, as determined solely by RMV, associated with producing the Certificates of Title. Any and all costs shall be paid by the Lienholder within fifteen (15) days of receipt of an invoice(s) from the RMV.

8. Change of Name or Address

The Lienholder will notify the RMV in writing of its intent to change its name and/or address at least thirty (30) days in advance of the change ("Notification"). The Lienholder shall contemporaneously notify its dealership clients of the name and/or address change(s) in order to allow the dealership sufficient time for computer reprogramming. Upon the RMV's request, the Lienholder shall provide the RMV with a copy of the notification.

9. Security and Confidentiality

Lienholder shall adhere to all the security requirements outlined in Sections 8 and 10 of the Access Agreement, the provisions of which are expressly incorporated herein. Lienholder further agrees to instruct each of its Individual ELT Participants having any involvement with personal data or other confidential information in procedures appropriate to ensure that the Lienholder's obligations under this section are fulfilled.

V. Recordkeeping, Inspections And Enforcement

1. Recordkeeping

Lienholder shall prepare and maintain a complete record of all ELT transactions.

2. Inspections and Enforcement

The RMV or its designee, shall have the right to inspect, examine and audit all records, reports and other compilations of the Lienholder which pertain to the ATLAS system and/or any other service performed pursuant to the Agreement, for purposes of determining compliance with the Agreement Terms, during the term of this Agreement and for five (5) years thereafter. The Lienholder shall cooperate fully in any such RMV audit, inspection, or examination and shall grant the RMV full access to its premises, operations, and records, with or without prior notice, for purposes of conducting such inspection, examination, or audit. The inspection, examination or audit provided for by this section may in the sole discretion of the RMV.

VI. Conflict of Interest

1. Lienholder shall not engage in any conduct which violates, or induces others to violate, the provisions of Chapter 268A of the Massachusetts General Laws regarding the conduct of public employees.
2. No officer, member, or employee of the RMV and no public official of the Commonwealth or any political subdivision thereof who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall:
 - (i) participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or
 - (ii) have any interest, direct or indirect, in this Agreement.
3. Lienholder represents and agrees that it presently does not have and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the services to be performed under this Agreement, or which would give rise to an appearance of a conflict of interest.
4. Lienholder further represents and agrees that should future work by Lienholder for any other agency, institution, company or individual during the term of this Agreement give rise to an interest, direct or indirect, which would conflict in any manner or degree with the services to be performed under this Agreement, or which would give rise to an appearance of a conflict of interest, Lienholder will give immediate notice of the matter to the RMV's Director of Registration and Title. A determination by the RMV that such a conflict or appearance exists shall be cause for immediate termination of this Agreement under Section XI.

VII. Liability and Indemnification

1. Limitation of Liability of RMV:

The RMV and its employees shall not be liable to Lienholder for any loss, costs, claim, liability, damage or expense, of any nature or kind in law or equity, in connection with or in any way arising from or related to the Lienholder's participation in the ELT Program, including without limitation, any loss, costs, claim, liability, damage or expense resulting from the RMV's action or inaction with regard to the provision of any service to Lienholder in connection with the Agreement, or the termination of this Agreement, or the ELT Program in general.

2. Indemnification:

- a. Lienholder shall be liable, and shall indemnify and hold harmless the RMV and the Commonwealth of Massachusetts, and their officers, employees and agents, against any liability, claim, loss, damage or expense, of every nature and kind in law or equity, arising out of or in connection with any misuse or misappropriation of any motor vehicle record or related information obtained from RMV in connection with the Agreement; any failure of Lienholder or its personnel to comply with the provisions of the federal Driver Privacy Protection Act, the "DPPA" (18 U.S.C. §2721 et seq.), the Massachusetts Identity Theft Act, G.L. c. 93H, Regulations Authorizing Disclosure of Massachusetts Driver's License or Learner's Permit Applicant Information, 940 CMR 37.00, the Standards for the Protection of Personal Information of Residents of the Commonwealth 201 C.M.R. 17.00, the Fair Information Practices provisions of M.G.L. 66A and other applicable provisions of Massachusetts or federal law or regulations regarding privacy of RMV information; any failure to safeguard and limit access to RMV files as required herein; any acts or omissions of Lienholder or its employees or agents relating to Lienholder's duties hereunder; or any other action or inaction by Lienholder or any of its employees, agents, contractors, or subcontractors in connection with this Agreement, including without limitation reasonable attorney's fees and other costs of defending any such claim or action.
- b. The obligations under this section shall survive the termination of this Agreement and the Lienholder shall in no way be relieved of liability hereunder by any termination of this Agreement.

VIII. Publicity

1. The Lienholder shall obtain the prior written approval of the RMV before it, or any of its agents or subcontractors, either during or after the expiration or termination of this Agreement, make any statement, or issue any material for publication through any medium of communication, bearing on the work performed or data collected under this Agreement.
2. If the Lienholder or any of its agents or subcontractors publishes a work dealing with the results and accomplishments attained in such performance, the Commonwealth shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

IX. Restrictions On Assignment

Lienholder shall not assign or in any way transfer its interest in this Agreement to any individual or party for any cause or purpose. None of the services provided by Lienholder shall be contracted or delegated to any other individual, agent, corporation, partnership, or other such entity. This Agreement is non-transferable, non-assignable, and non-attachable.

X. Amendments and Waivers

1. No amendment to or waiver from the terms of this Agreement shall be effective unless it is in writing and signed by the Parties. No waiver by the RMV of any default or breach by Lienholder shall constitute a waiver of any subsequent default or breach.
2. The terms of this Agreement, the Access Agreement, and the Program Specifications contain the entire terms with respect to the subject matter hereof; and these supersede all prior terms, conditions, promises, conduct, representations, negotiations, undertakings, licenses and permits not set forth or incorporated herein. The terms of this Agreement may be amended or modified at any time by the RMV.

XI. Termination of Agreement

1. Termination for Breach

In addition to any termination rights contained in this Agreement, the RMV may immediately terminate this Agreement and the Lienholder's access to RMV data at any time, if the RMV determines in the exercise of its sole discretion, that the Lienholder engaged in a material violation of any term of this Agreement, the DPPA, M.G.L. c.93H, 940 CMR 37.00 or any other law pertaining to the privacy of motor vehicle records. The RMV shall have no liability to the Lienholder for the termination of this Agreement.

2. 30 Day Termination

This Agreement may be terminated by either party at any time upon thirty (30) days written notice. This Agreement may be immediately terminated without advanced notice upon any material breach of any covenant by either party, or if the performance of this Agreement by the RMV is made impossible or impractical, as determined in the sole reasonable judgment of the RMV, or by any order of any Court, or any action of the Legislature of the Commonwealth of Massachusetts. Notice of termination shall be as specified in section XII.1 of this Agreement.

XII. Miscellaneous Terms

1. Notices

All notices required or permitted by this Agreement shall be in writing and shall be delivered either in person, by first class mail, postage prepaid, by certified mail, return receipt, or by electronic mail (with a simultaneous confirmation copy sent by first class mail properly addressed and postage prepaid) to the address(s) as maintained by the RMV's Customer Relationship Management system received by the requestor via the RMV's Business Partner Contact form, or to the following addresses:

To the RMV:

MassDOT Registry of Motor Vehicles Division
RMV IS Security
25 Newport Avenue Extension
Quincy, MA 02171
RMVBUSINESSPARTNERS@DOT.STATE.MA.US

To the Lienholder: (Please print)

Legal Business Name: _____
DBA Name: _____
Address Line 1: _____
Address Line 2: _____
Contact Name: _____
Contact Email: _____
Contact Phone Number: _____

Any Party may change its address for the purposes of receipt of notices by providing written notice to the other Party in accordance with this paragraph.

2. Governing Law

Lienholder agrees to bring any federal or state legal proceedings arising under this Agreement in which the Commonwealth or the RMV is a party in a court of competent jurisdiction within the Commonwealth of Massachusetts. The Agreement terms shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

3. Non-Exclusive Agreement

The Lienholder acknowledges that this Agreement is not an exclusive agreement. At its sole discretion the RMV may enter into agreements with other parties for the same or similar services as provided by this Agreement, on such terms and conditions as the RMV determines, which may or may not be the same or similar to the terms and conditions contained herein.

4. Construction

The captions contained herein are for purposes of convenience only, and in no way effect, alter, amend, or modify the substance of the provisions hereof.

5. Severability

In the event that any provision of this Agreement shall be or become invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or imparted thereby and such provision shall be ineffective only to the extent of such invalidity, illegality, or unenforceability.

6. Amendment or Waiver

- a. No amendment to or waiver from the terms of this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of both Parties. No waiver by the RMV of any default or breach by Lienholder shall constitute a waiver of any subsequent default or breach.
- b. No failure of either Party to exercise any right given to it under this Agreement or to insist upon strict compliance by the other party to its obligations under this Agreement, and no custom or practice of the parties in variance with the terms of this Agreement, shall constitute a waiver of either Party's right to demand exact compliance with the terms of this Agreement.

7. Entire Agreement

These terms of this Agreement, the Access Agreement, and the Program Specifications contain the entire terms with respect to the subject matter hereof and supersede all prior terms, conditions, promises, conduct, representations, negotiations, undertakings, licenses and permits not set forth or incorporated herein.

Signatures

IN WITNESS WHEREOF, the parties have hereto caused this instrument to be executed by their duly authorized officials or officers, to take effect as of the date first written above.

For Registrar of Motor Vehicles:

For Lienholder:

Signature

Signature of authorized representative

Printed Name

Printed name of authorized representative

Title

Title

Date

Date

Unless otherwise specified below, the above signatory is designated as the principal authorized representative of the Lienholder and shall have the responsibility of coordinating the Lienholder's obligations under this Agreement. Such designee may be changed during the period of this Agreement and written notice must be provided to the RMV within ten (10) days of such change.