REGISTRY OF MOTOR VEHICLES

Electronic Lien and Title Program (ELT) Service Provider 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 _____ **("Service Provider" or "Requestor,")**

WHEREAS, the RMV has established a program commonly known as the Electronic Lien and Title Program ("**ELT**" or "**ELT Program**") that allows for the electronic processing of title lien transactions by authorized lienholders ("**Lienholder**") approved by the RMV for participation in the ELT Program; and

WHEREAS, the ELT Program uses service providers, which perform services for both the RMV and the Lienholder, as hereinafter defined and described; and

WHEREAS, the Service Provider desires to participate in the ELT program, to facilitate communication and transaction processing between the RMV and Lienholder; and

WHEREAS, the Service Provider requests authorization to directly interface with the RMV to process ELT Program transactions;

WHEREAS, the Service Provider has executed an Agreement for Access to Records and Data Maintained by the Registry of Motor Vehicles ("**Access Agreement**"); and

WHEREAS, the RMV agrees to authorize the Service Provider to participate in the ELT program pursuant to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals (which are hereby incorporated into and made an integral part of this Agreement), as well as duties and obligations set forth in this Agreement, it is agreed by and between the parties as follows:

I. Scope of Agreement

1. This Agreement, together with the Access Agreement, the ELT Business Specifications and the ELT Technical Specifications (collectively referred to as "ELT Program Specifications"), as they may be amended from time to time, establish the respective obligations and responsibilities of the Service Provider and the RMV and, together, constitute the entire Agreement between the parties and supersedes all other prior written or oral agreements 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.
2. 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 ELT Program Specifications shall not be considered a conflict; and to the extent performance of the requirements of both the Agreement and the ELT 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.
3. The Service Provider is authorized, subject to the terms of this Agreement, to process the following transactions which comprise the ELT Program as of the date of this Agreement, and such additional transactions the RMV may include in the ELT Program in the future; provided however, that the Service Provider is required to support transactions i-viii unless specifically agreed to by the RMV.
   - **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

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II. Definitions

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

1. **"Lienholder"** shall mean a lender who has contracted with the Service Provider for services necessary to enable it to participate in the ELT Program.
2. **"Host System"** is the computer system(s) utilized by the Service Provider to support the ELT Program as described in this agreement.
3. **"Individual ELT Participants"** are those employees or agents of the Lienholder who are authorized to process ELT transactions on the behalf of the Lienholder.
4. **"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.
5. **"Service Provider"** shall mean the entity that, based on the Program Specifications, is authorized to directly interface with the RMV to process ELT transactions.
6. **"Requestor"** shall mean the Service Provider for purposes of this Agreement and the Access Agreement.
7. **"Messages"** shall mean electronic transactions that are used to exchange information between the Service Provider's Host System and the RMV.
8. **"Solicited Messages"** shall mean messages that originate from the Massachusetts RMV and are sent to the Service Provider.
9. **"Unsolicited Messages"** shall mean messages that originate from a Service Provider and are sent to the Massachusetts RMV.

III. Relationship of the Parties

1. Nothing contained herein is intended nor shall anything herein be construed to create the relationship between the parties of principal and agent, partners, joint ventures, or any other kind of business combination that would involve a shared responsibility for the Service Provider's business or the RMV's functions.
2. None of the services to be performed by the Service Provider pursuant to this Agreement shall be subcontracted or delegated to any other party without the prior written consent of the RMV. No such subcontract, delegation or commitment made by the Service Provider shall relieve or discharge the Service Provider except as specifically set forth in the consent. The Service Provider shall insure that all of its subcontractors are fully trained in the ELT Program and its requirements. The RMV shall not be obligated under any contract, subcontract or other commitment made by the Service Provider.

IV. Term

This agreement shall be in effect for 3 years, and may be renewed for additional three year periods upon notification from the RMV. The RMV will notify the Service Provider 30 day period prior to the expiration of the Agreement via the Service Provider's email, as provided. If the Service Provider does not renew the Agreement prior to its expiration date, all access will terminate on that date.

V. Service Provider Responsibilities

At its own expense, the Service Provider shall be responsible for the following functions, which may be further described in the Program Specifications, as they may be amended from time to time:

1. **Host System**
   - **a.** The Service Provider shall develop and maintain a Host System capable of consuming RMV web services that support the ELT Program and connecting Lienholders to ATLAS for the purpose of processing ELT transactions as defined in the Program Specifications.
   - **b.** The Service Provider shall use reasonable, good faith, best efforts to make the Service Provider's Host System and related services available during the hours of operation of the ELT Program, as defined in the ELT Program business specifications and as they may be amended from time to time.
   - **c.** The Service Provider shall have all unsolicited messages from their contracted Lienholders delivered and accepted in the specified RMV electronic mailbox by the designated nightly deadline as specified in the Program Specifications, currently 8:30PM EST, Monday through Friday and 6:30PM Saturday.
2. **Contractual Agreement with Proposed Lienholders:**
   The Service Provider shall enter into a contractual arrangement with all Lienholders who have selected it as their ELT Service Provider, and shall notify the RMV in a manner as required in the Program Specifications. All Lienholder contracts shall contain language which adequately notifies the Lienholder of the RMV's ELT program requirements and of the RMV's right to terminate its participation in the ELT Program.

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3. **Lienholder Change of Service Provider:**
The Service Provider recognizes the Lienholder's right to change Service Providers at any time. Should a Lienholder elect to change its existing Service Provider, it is the responsibility of the existing Service Provider to electronically transfer the records to the newly chosen Service Provider prior to the termination of the contract. Failure to electronically transfer all Lienholder's records to the new Service Provider prior to the termination of the existing contract constitutes a material breach and may result in termination of this Agreement.

4. **Individual ELT Participant Training**
The Service Provider shall provide Individual ELT Participants with adequate training. Individual ELT Participants must be sufficiently trained on the use of the software so as to enable them to effectively participate in the ELT Program.

5. **Ongoing Help-Line Support**
The Service Provider shall provide its Lienholders with primary on-going help-line support for both software/systems and policy/procedures problems.
To the extent the Service Provider is unable to answer a question or resolve a problem that relates to an RMV system or policy, the Service Provider shall seek assistance from the RMV; however, Lienholders shall be instructed to not contact the RMV directly.

6. **Reports, Record Retention, and Audit Requirements**
The Service Provider shall retain a record of all transactions sent to and received from the RMV related to the ELT Program for five (5) years and shall make them available to the RMV upon request.
All of the Service Provider's records and practices related to the ELT Program shall be subject to audit by the RMV. RMV agrees to use any information obtained through such audits only for official purposes associated with the ELT Program.

7. **Information Updates**
At the request of RMV, the Service Provider shall promptly transmit to its Lienholders notice of all changes in RMV policies and procedures, or other informational updates related to the ELT Program. The Service Provider shall ensure that all of its Lienholders have the capability of receiving any such transmissions. The RMV shall be entitled to use such internet e-mail capability to communicate directly with Lienholders in connection with any aspect of the ELT Program. The Service Provider shall inform the RMV of the current internet e-mail address for both, its help-line, and for each of its Lienholders.

8. **Non-Interference**
The Service Provider agrees that the RMV retains full responsibility and control over the underlying RMV transactions processed through the ELT Program, including the development of all policies and procedures to be observed in processing such transactions. The Service Provider shall refrain from in any way interfering with, obstructing, undermining, or contradicting the RMV's authority over the underlying RMV transactions.

VI. RMV Responsibilities

The RMV shall be responsible for the following functions:

1. **Access to Data**
The RMV shall make available to the Service Provider, at no cost to Service Provider, direct, on-line, real-time access to certain motor vehicle records related to vehicle registration, identification, ownership, and lienholder information, as determined necessary by the RMV, for use by Lienholders solely to process transactions through the ELT Program. In addition, the RMV will provide and accept daily files of lien updates.

2. **Issue ELT Lienholder Agreement**
Upon RMV approval of Lienholder for participation in the ELT Program, the Service Provider shall obtain a written verification from the Lienholder that any employee or contractor performing ELT transactions listed in Section I.3 of this agreement has undergone a background check as specified in Section 11a of the Access Agreement. A copy of the current ELT Lienholder Agreement can be found: *https://atlas.massrmv.com/Portals/54/Docs/ELT/Sample%20ELT%20Lienholder%20Agreement%20v4.2%2003.05.19.pdf*

3. **Security Access**
The RMV shall assign a unique code for each approved Lienholder to allow for processing of transactions listed in Section 1c of this Agreement.

4. **Notice of Changes in Policies or Procedures**
The RMV will provide the Service Provider, and Lienholders, either directly or through the Service Provider, notice of all changes to policies and procedures related to the ELT Program and/or the underlying registration transactions.

5. **Audit Service Provider**
The RMV shall conduct such audits of the Service Provider's work as it deems necessary, which may include on-site audits at the Service Provider's facility. The RMV will provide the Service Provider with written notice at least fifteen (15) days prior to said audit, which shall be performed with the reasonable cooperation of the requestor. The RMV will provide the Service Provider with notice of any unsatisfactory conditions disclosed by any audit activity, which the Service Provider shall remedy within fifteen (15) calendar days; provided, however that the Service Provider may request an extension of time, which the RMV may grant in its sole discretion.

6. **Responsibility for Underlying RMV Transactions**
The RMV retains full control over the underlying RMV transactions processed through the ELT Program, including the development and establishment of all policies and procedures related to such transactions.

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VII. RMV's Use of Contractors

The Service Provider acknowledges that, in connection with the conduct of its regular business operations, including the development and operation of the ELT Program, the RMV routinely and regularly employs computer consultants, programmers and data processors on a contract basis, both directly and through contracts with computer consulting companies. Nothing in the Agreement shall prevent the RMV from allowing such consultants and contractors to assist it or perform any service in connection with the ELT Program, in their roles as contractors of the RMV, whether or not the companies who employ such individuals, or any of their subsidiaries or affiliates, also participate in the ELT Program or provide consulting or other services to other companies who participate in the ELT Program. The Service Provider shall have no right to require the RMV to alter its practice of employing contractors or freely assigning them to any task within the RMV including work in connection with the ELT Program, and the Service Provider shall have no right to prevent such RMV contractors from working on the ELT Program, other than the Service Provider's right to terminate this Agreement without cause under Paragraph 12.

VIII. Security

The Service Provider, by this Agreement, certifies it has an information security program(s) in place that meet the Security Requirements as outlined in Section 8 of the Access Agreement.

IX. Ownership, Confidentiality and Use of RMV Information

1. All data acquired by the Service Provider from the RMV or from Lienholders for transmittal to the RMV in performance of this Agreement, shall be and remain the property of the RMV.
2. The Service Provider shall make no use of the RMV records or other information obtained from the RMV other than that specifically authorized by this Agreement and necessary for the performance of the Service Provider's functions in the ELT Program, without the prior written consent of the RMV.
3. The Service Provider shall instruct each of its employees, agents and subcontractors having any involvement with RMV data in procedures appropriate to ensure that the Service Provider's obligations under this section are fulfilled.

X. Structured Test

The Service Provider must successfully complete the RMV Structure Test before representing to any entity that it is able to provide any services related to the ELT Program. The RMV Structure Test shall consist of a pre-defined set of business transactions and associated messages that must be successfully executed between the Service Provider's Host System and the RMV. This test will cause the Service Provider to send and respond to a pre-defined set of solicited messages and send the RMV a pre-defined set of unsolicited messages all of which the Service Providers Host System must successfully undertake. Upon the successful completion of the RMV Structure Test, the RMV may issue the Service Provider a written notice of acceptance, which will evidence the RMV's acceptance of the Service Provider's Host System and network. Upon receipt of said written notice, the Service Provider will be permitted to implement the messaging capability in production if all other conditions for participation in the ELT Program have been satisfied.

XI. Compensation

The Service Provider shall not be entitled to compensation of any kind from the RMV for the submission of Vehicle Record information to the RMV, or for any other function or service provided under this Agreement. The Service Provider may charge a Lienholder monthly participation fees, transaction processing fees, and other fees or charges as may be provided for in the Lienholder's agreement with the Service Provider.

XII. Termination of Agreement

1. **Termination for Breach.**
   In addition to any termination rights contained in this Agreement, the RMV may immediately terminate the Agreement and the Service Provider's access to RMV data at any time, if the RMV determines in the exercise of its sole discretion, that the Requestor engaged in a material violation of any term of this Agreement, the federal Driver Privacy Protection Act ("DPPA"), M.G.L. c 93H, , 940 CMR 37.00, or any other law pertaining to the privacy of Vehicle Records. The RMV shall have no liability to the Service Provider for terminating the Agreement under this provision.
2. **30 Day Termination.**
   Notwithstanding Paragraph 4, 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 in writing signed by a duly-authorized representative of the terminating party and addressed in accordance with the terms of Section 20 of this Agreement.

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XIII. Indemnification

The Service Provider agrees to defend, hold harmless and indemnify the RMV, the Massachusetts Department of Transportation, the Commonwealth of Massachusetts and their employees and agents from any and all claims, actions, damages, or losses which may be brought or alleged against them for the negligent, improper, or unauthorized access, use or dissemination of the personal information contained in the RMV data.

The Service Provider shall indemnify and hold harmless the Commonwealth of Massachusetts and the Massachusetts Department of Transportation, and the RMV 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 RMV data obtained from the RMV; any failure of the Service Provider to comply with any applicable provisions of State or Federal laws or regulations regarding privacy of motor vehicle records or data; any failure to safeguard and limit access to the RMV data as required herein; and/or any other acts or omissions of the Service Provider or its employees or agents in connection with the performance, exercise, or enjoyment of this Agreement, including without limitation reasonable attorney's fees and other costs of defending any such claim or action. The obligations under this paragraph shall survive the termination of this Agreement.

XIV. Limitation of Liability

The RMV makes no representation or warranty, express or implied, with respect to the accuracy of any RMV data from a source other than the RMV. Therefore, except for acts or omissions that constitute gross negligence or willful misconduct by the Commonwealth of Massachusetts, the Massachusetts Department of Transportation, the RMV, their employees or agents, neither the Commonwealth of Massachusetts, the Massachusetts Department of Transportation, the RMV, or their employees or agents shall be liable to the Requestor for any costs, claims, liability, damages, expenses, lost production, or any other loss of any nature or kind, in law or equity, in connection with this Agreement, including but not limited to inaccurate, incomplete, or unavailable RMV data.

XV. Infringement Protection

1. The Service Provider represents and warrants that neither the Service Provider's Host System nor any equipment, software, or any combination thereof, provided pursuant to this Agreement, nor the use thereof, violates or infringes upon any U.S. patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any action brought against the Commonwealth or the RMV (hereinafter collectively referred to as "the RMV") in which such infringement is alleged, the Service Provider will, to the extent permitted by the law, defend or settle the claim at its own expense, and indemnify and hold harmless the RMV against any expenses, costs or damages, including reasonable legal fees and expenses, incurred by the RMV in connection with such claim, but such defense, settlement and payment are conditioned upon the following:
   a. The Service Provider is notified of any claim promptly after the RMV becomes aware of it.
   b. The RMV gives the Service Provider information reasonably available and assistance reasonably necessary to facilitate the defense or settlement of such claim and, to the extent permitted by law, the RMV makes any defenses available to it available to the Service Provider.
2. The RMV shall have the right to enter into any negotiated settlement, but the Service Provider shall not be responsible for any settlement or compromise made without its consent so long as the Service Provider has assumed its responsibility to defend under Paragraph 15 (a). In all events, the RMV shall have the right to participate in the defense of any suit or proceeding through its own counsel.
3. The Service Provider shall not be liable to indemnify the RMV against any claim of infringement based upon equipment, software or systems made or modified to the RMV's own detailed specifications or design, or required to be used by the RMV as part of the ELT Program.
4. No limitation of liability provision of this Agreement shall apply to the indemnification provided by this section. The obligations contained in this section shall survive termination of the Agreement.
5. The provisions of this section state the sole remedy of the Commonwealth regarding any claimed infringement by the equipment, software or Service Provider's Host System provided by the Service Provider pursuant to this Agreement.

XVI. Intellectual Property Rights

1. **Intellectual Property**
   Subject to the provisions of Paragraph 15(b), the Service Provider reserves full ownership rights to all forms of intellectual property developed by it for utilization in connection the ELT Program, which comprise the Service Provider's Host System and Lienholder's Network, including but not limited to those components necessary to collect, assemble and transmit to and from the Lienholder Locations, the Service Provider and the RMV the inquiries, information and funds transfers which are the subject of the Agreement. These components include, without limitation, any and all inventions, devices, processes, software, and formulas utilized in or comprising any component of the Service Provider Host System and/or the Lienholder's Network, as well as all formulas, patterns, compilations, programs, devices, methods, techniques, and processes developed by the Service Provider for use in the ELT Program.

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2. Use of the RMV Name

The Service Provider may use the RMV's name in connection with its provision of services to Lienholders, but only with the prior written approval of the RMV. The Service Provider shall not state or imply that the RMV recommends or requires the use of the Service Provider's program or service to the exclusion of other similarly available services; or that the Service Provider is the exclusive provider for participation in the ELT Program; or that the Service Provider has any relationship with the RMV other than as stated in this Agreement.

XVII. Publicity

1. The Service Provider 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 Service Provider 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.

XVIII. Tax Compliance and Trade Restriction Certification

1. The Service Provider certifies pursuant to M.G.L. c. 62C, §49A that it has complied with all laws of the Commonwealth related to taxes.
2. The Service Provider certifies that it is not engaging in activities which would subject it to the restrictions contained in M.G.L. c. 7, §§22G-22M, applicable to entities doing business with the Country of Burma (Myanmar).
3. The Service Provider certifies that it does not have ten or more employees in an office or facility located in Northern Ireland. The Service Provider further certifies that if it does hire or procure the services of ten or more employees in an office or facility in Northern Ireland during the term of this agreement, it shall provide the written certification required by M.G.L. c.7, section 22C to the Registrar within 30 days of establishing such an employee base in Northern Ireland.

XIX. Assignment

The Service Provider shall not assign or in any way transfer any interest in this Agreement to any other party; provided, however that a change of control of the Service Provider shall not be deemed to violate this provision.

XX. Notices

Notice required or permitted by this Agreement shall be addressed to the address(s) as maintained by the Service Provider on their company profile on the RMV's CRM system or as follows:

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 Requestor:
(Print Business Name, Address, and Email Address)

Legal Business Name: _____

DBA Name: _____

Address Line 1: _____

Address Line 2: _____

Contact Name & Email: _____

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.

XXI. Non-Exclusive Agreement

The Service Provider 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.

XXII. Governing Law and Forum

This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts. Each party agrees to bring any federal or state legal proceedings arising under this Agreement in a court of competent jurisdiction within the Commonwealth of Massachusetts.

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XXIII. 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.

XXIV. Miscellaneous

1. Provisions of this Agreement may be amended at any time, but only by an instrument in writing, signed by duly authorized representatives of both parties hereto.
2. 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.
3. Section and paragraph headings are used for reference and convenience only and shall not impact the interpretation of this Agreement.

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 below.

Massachusetts Registry of Motor Vehicles:

Signature

Printed Name

Title

Date

Service Provider:

Signature

Printed Name

Title

Date

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