

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION**

DEALER SERVICES PROGRAM AGREEMENT

WITH

(APPLICANT NAME)



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THIS AGREEMENT, effective this ___ day of _____, 20__, by and between the New Jersey Motor Vehicle Commission, located at 225 East State Street, Trenton, New Jersey 08666 (hereinafter referred to as the “NJMVC”), and the [*Applicant Name*], (hereinafter referred to as “Program Provider”), located at [*Applicant address*], sometimes collectively referred to herein as “the Parties”:

WHEREAS, the NJMVC has instituted a “Dealer Services Program (“DSP”) to improve operational efficiency and customer service; and

WHEREAS, pursuant to the DSP, the NJMVC is granting Program Provider limited nonexclusive access to the NJMVC’s mainframe system to process motor vehicle title and registration transactions for approved New Jersey licensed motor vehicle dealerships as defined by N.J.S.A. 39:10-19; and

WHEREAS, the NJMVC has determined, based upon submittals provided by Program Provider, that Program Provider is qualified to perform the required services in the manner and on the terms and conditions set forth herein; and

WHEREAS, the Chairman and Chief Administrator of the NJMVC has determined that it is in the public’s best interest to designate the [*Applicant Name*] as a “Program Provider”; and

WHEREAS, Program Provider desires to accept said designation and to perform said duties in accordance with Title 39 of the New Jersey Statutes, all applicable rules, regulations, instructions and performance standards.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth and other good and valued consideration, the Parties hereby agree to the terms and conditions included in this agreement as set forth below:

1.0 DEFINITIONS

The following terms used throughout this DSP Agreement (“Agreement”) shall have the following meaning:

Controlled Inventory – Specific items created, regulated, verified and supplied by the NJMVC to allow Program Providers to process transactions. Controlled Inventory includes, but is not limited to, license plates, registration and title document and dealer reassignments.

Dealer – A person engaged in the business of buying, selling or exchanging motor vehicles and licensed as a motor vehicle dealer by the NJMVC.

Dealer Services Program (DSP) – A program instituted by the NJMVC to improve operational efficiency and customer service by granting Program Provider’s limited, nonexclusive access to the NJMVC’s mainframe system to process motor vehicle title and registration transactions for licensed and approved Dealers.

Dedicated Plates – A diverse group of illustrated license plates made available to the public. Each dedicated plate was established by legislation specific to that plate. New categories of

dedicated plates are added as they become legislated. Various registration and renewal fees apply to each plate category.

Motor Vehicle Record – Any document or record that pertains to a motor vehicle operator’s permit, driver’s license, vehicle registration, title, identification card, and customer information maintained in any format by the NJMVC.

Motor Vehicle Transaction – A procedure by which a motor vehicle is registered or a title is issued pursuant to Title 39 and the terms of this Agreement.

NJMVC Comprehensive System-The computer system used by the New Jersey Motor Vehicle Commission in order to allow inquiries against and updates to motor vehicle records.

Participating Dealer Agreement – The Agreement between the Program Provider and a Participating Dealer establishing the terms and conditions of a Dealer’s participation in the DSP.

Participating Dealer – A Dealer approved by the NJMVC to participate in the DSP.

Participating Dealer Acknowledgment Form – A statement executed by the Participating Dealer outlining the Participating Dealer requirements for enrollment and participation in the DSP.

Person – includes natural persons, firms or co-partnerships, corporations, associations, or other artificial bodies, and their members, officers, agents, employees, or other representatives.

Personally Identifiable Information - Information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

Personal Information – In accordance with N.J.S.A. 39:2-3.3, Personal Information means information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address other than the five-digit zip code, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.

Program Provider – An approved entity providing services to the NJMVC under the terms specified in this Agreement.

Subcontractor – An entity retained by Program Provider, under the terms of a subcontractor agreement, to fulfill any of Program Provider’s obligations under the DSP Agreement.

2.0 RELATIONSHIP OF THE PARTIES AND EFFECTIVE DATE

- 2.1 The relationship of Program Provider to the NJMVC is that of a Program Provider and not that of an employee of the NJMVC. Program Provider, in accordance with its status as a Program Provider, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the State of New Jersey or of the NJMVC. Program Provider will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the State, including but not limited to workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.
- 2.2 This Agreement shall become effective on the date set forth above and shall continue in full force and effect for a period of three (3) years and may be extended for two (2) additional one-year (1) periods unless terminated earlier pursuant to the provisions of this Agreement. Any such extension(s) must be in writing pursuant to section 3.1.2 herein.

3.0 CONTRACTUAL TERMS AND CONDITIONS

3.1 Terms and Conditions

The foregoing recitals contained in the "whereas" clauses are incorporated by reference as a material part of this Agreement.

Program Provider shall implement the program for which it has been approved DSP in accordance with the Request for Applications ("RFA"), attached hereto as Appendix A and incorporated herein by reference and made a material part of this Agreement.

- 3.1.1 This Agreement supersedes all prior agreements, negotiations, representations, proposals, awards, amendments and extensions, both written and oral, relating to its subject matter. Neither this Agreement nor any part or interest of this Agreement may be assigned.
- 3.1.2 This Agreement may be amended or modified by the written request of either Party. Any proposed amendment or modification must be submitted to the other Party prior to any formal discussion or negotiation of the issue. Any proposed amendment to this Agreement will not be effective until it is signed by the NJMVC and Program Provider.
- 3.1.3 This Agreement and any amendments or addenda thereto represent the entire agreement between the NJMVC and Program Provider with respect to the subject matter herein, and supersedes all other negotiations, contracts, including but not limited to the Original Agreement, and representations (if any) made by and between such Parties.
- 3.1.4 Before the effective date of this Agreement, Program Provider shall establish and maintain an office within the State of New Jersey ("New Jersey Office"). Once the New Jersey Office is established, Program Provider shall notify the

NJMVC of the location of the office, the address, and all contact numbers, including telephone and facsimile machine.

Program Provider shall maintain all motor vehicle inventory and transactional materials in its New Jersey Office, in a secure location, until distributed to Participating Dealers pursuant to this Agreement.

- 3.1.5 Program Provider shall designate an agent assigned to Program Provider's New Jersey office, who shall be responsible for service of legal process and other legal notices. Program Provider shall immediately (within no more than twenty-four (24) hours) notify the NJMVC of a change in the agency identified pursuant to this subsection.
- 3.1.6 Program Provider shall insure that, prior to being granted access to NJMVC records or documents, and prior to undertaking duties directly or indirectly involved in the issuance or processing of transactions within the scope of this Agreement, all prospective employees and current employees of Program Provider, and all subcontractors and their employees with access to motor vehicle records or documents, shall be fingerprinted and agree to a criminal history background check pursuant to N.J.S.A. 39:2A-32.

If the information from the criminal history record background check discloses that a prospective or current employee of Program Provider has a criminal history, the NJMVC shall review the information with respect to the type and date of the criminal offense to determine, in its sole discretion, if the person is qualified to have access to NJMVC records or documents and to engage in duties within the scope of this Agreement. Criminal offenses which shall immediately disqualify an individual from access or responsibilities with any provisions of this Agreement include, but are not limited to, any crime or offense, whether committed in New Jersey or in another jurisdiction, which in New Jersey would constitute murder, assault with intent to murder, espionage, treason, rape, kidnapping, unlawful possession of an explosive or weapon, extortion, armed robbery, distribution of or intent to distribute a controlled substance, possession of a controlled substance, willful destruction of property, burglary, theft, fraud, forgery, terrorism, solicitation of money or resources for a terrorist organization and aggravated assault.

An individual shall not be disqualified from having access or responsibilities with any provision of this Agreement on the basis of any criminal record background check without an opportunity to challenge the accuracy of the disqualifying criminal history record. An individual who has been disqualified under the provisions of this Agreement shall be entitled to reapply for the position if the disqualifying conviction is reversed or expunged. An individual shall not be disqualified from having access or responsibilities with any provision of this agreement on the basis of any conviction disclosed by a criminal record background check performed pursuant to N.J.S.A. 39:2A-32 if the individual has affirmatively demonstrated to the chief administrator of the NJMVC, by clear and convincing evidence, the individual's rehabilitation.

- 3.1.7 The failure of either Party to enforce the provisions, or to require performance of, any provisions of this Agreement shall in no way be construed as a waiver of such provisions, nor in any way to affect the validity of this Agreement or any part thereof, or of the right of either Party to enforce thereafter each and every such provision.
- 3.1.8 Nothing contained in this Agreement shall be construed to require Dealers or leasing or rental companies to participate in the DSP.
- 3.1.9 Nothing contained in this Agreement shall be construed to permit a Participating Dealer to require customers to have their transactions processed through the DSP.
- 3.1.10 Nothing contained in this Agreement shall be construed to preclude the NJMVC from entering into similar DSP Agreements with additional Program Providers.
- 3.1.11 Nothing contained in this Agreement shall be construed as creating any rights in any third party.

3.2 Contract Transition

In the event Program Provider's services end either by the expiration or termination of this Agreement, Program Provider shall continue services pursuant to the terms of this Agreement for an additional period of up to ninety days (90) from the expiration date of this Agreement or any extension thereof, at the written request of the NJMVC.

3.3 Minimum Program Provider Staff Requirements

Program Provider shall maintain sufficient staff capable of providing prompt, efficient, courteous and professional service to Participating Dealers. Program Provider shall maintain sufficient staff to achieve a three (3) business day turnaround time for the completion of transactions submitted for processing by Participating Dealers.

Program Provider shall employ a full-time manager responsible for controlling and supervising all daily activities performed as part of the DSP and this Agreement. A manager shall be present and performing his/her duties on a full-time basis for a minimum of forty (40) hours per week during Program Provider's normal business hours.

3.4 Facilities and Location

Program Provider shall obtain and maintain a facility for office space in the State of New Jersey suitable for performing all services required under the DSP and this Agreement. Such facility shall be contained within a secure building, and include a security system with cameras and a secure computer room. The facility must also have a separate secure location for storing NJMVC inventory and documents. The facility must comply with all State and municipal building codes. All costs incurred by Program Provider in purchasing, leasing or renting, or renovating the required premises shall be borne solely by Program Provider. If the office space is shared by another business, the DSP operations shall be physically segregated from the areas

associated with the other business, with secure access limited only to Program Provider authorized personnel. Program Provider shall not move the office established under the terms of this Agreement without the prior written approval of the NJMVC.

3.5 Service Fee

Program Provider shall pay the NJMVC an administrative fee of three thousand fifty dollars (\$3,050) per month for the maintenance, support and connectivity deemed necessary by the NJMVC for services performed under the terms of this Agreement. The first payment of three thousand fifty dollars (\$3,050) is due by no later than the thirtieth (30th) day after the effective date of this Agreement and shall be paid thereafter by the twentieth (20th) calendar day of each month. Payment shall be made by check payable to the NJMVC and remitted to the Program Manager identified in Section 16 of this Agreement.

3.6 Compensation

Program Provider shall receive no compensation from the NJMVC for services rendered by Program Provider pursuant to the DSP or this Agreement. Program Provider may charge Participating Dealers participation fees for each transaction and such other fees as provided for in the Participating Dealer Agreement.

3.7 Subcontracting

Program Provider may not subcontract without the prior written consent of the NJMVC. Such consent, if granted, shall not relieve Program Provider of any of its responsibilities under this Agreement, nor shall it create a contractual relationship between the NJMVC and any subcontractor. If Program Provider uses a subcontractor to fulfill any of its obligations under this Agreement, Program Provider shall be responsible for the subcontractor's: (a) performance; (b) compliance with all terms and conditions of this Agreement; and (c) compliance with all applicable laws.

3.8 Claims and Remedies

This Agreement shall be governed by the laws of the State of New Jersey, both as to interpretation and performance, and any action at law, suit in equity or judicial proceeding for the enforcement or breach of this Agreement or any provision thereof shall be instituted and maintained in any State court of competent jurisdiction in the County of Mercer, State of New Jersey.

3.9 Compliance with Applicable Laws

Program Provider must comply with all local, State and federal laws, rules and regulations applicable to the services performed under this Agreement. This Agreement is pursuant to the Contractual Liability Act and regulations of the State of New Jersey without reference to conflict of laws and principles.

3.10 Personal Information & Personally Identifiable Information

In accordance with the New Jersey Drivers' Privacy Protection Act ("DPPA") N.J.S.A. 39:2-3.3, et seq., and the federal Drivers' Privacy Protection Act of 1994, 18 U.S.C. §2721 et seq., Program Provider and its employees shall maintain in strictest confidence and not disclose (except to Participating Dealers and subcontractors approved by the NJMVC in order to perform its duties under this Agreement) to any person, firm or corporation, Personal Information obtained under this Agreement.

Program Provider shall comply with all applicable State and federal laws that require the notification of individuals in the event of unauthorized release of Personally Identifiable Information, Personal Information, or other event requiring notification. In the event of a breach of any of Program Provider's security obligations or other event requiring notification under applicable law ("Notification Event"), Program Provider shall assume responsibility for informing the Commission within 24 (twenty-four) hours and all such appropriate individuals in accordance with applicable law and to indemnify, hold harmless and defend the State of New Jersey, its officials, employees, and agents, from and against any claims, damages, or other harm related to such Notification Event. All communications must be coordinated with the State of New Jersey by contacting the Commission at 609-341-5777.

All Personally Identifiable Information and Personal Information must be protected. All data and information must be classified in accordance with the State's Asset Classification and Control policy, 08-04-NJOIT (www.nj.gov/it/ps). Additionally, data and information must be disposed of in accordance with the State's Information Disposal and Media Sanitation policy, 09-10-NJOIT (www.nj.gov/it/ps).

Data and information usage, storage, and protection is subject to all applicable federal and State statutory and regulatory requirements, as amended from time to time, including, without limitation, those for the New Jersey Identity Theft Prevention Act, N.J.S.A. 56:11-44, et seq., the federal DPPA, and the New Jersey DPPA.

No State data and information shall be processed on or transferred to any portable device or portable storage medium including smart devices and/or USB devices, unless that device or storage medium has been approved in advance in writing by the State of New Jersey. The Program Provider shall not transfer State of New Jersey data and information outside of the United States.

3.11 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be void, invalid or otherwise unenforceable, such provision or portion may be reformed by the Parties, insofar as possible, to cure the defect and give maximum effect to the intent of the Parties in entering into this Agreement to correct the issue and, in any event, the remainder of the Agreement shall continue in full force and effect.

3.12 Termination

- 3.12.1 The NJMVC shall have the right to terminate this Agreement at any time and for any reason, or no reason, upon ninety (90) days' prior written notice to Program Provider. Program Provider shall have the right to terminate this Agreement for any reason, or no reason, by providing ninety (90) days' prior written notice to the NJMVC. If either party, pursuant to the terms of this section, terminates the Agreement:
- a. Program Provider is required to reconcile, account for and return all assigned, yet unused, controlled-numbered inventory to the NJMVC's warehouse within twenty (20) business days of termination, unless otherwise requested in writing by the NJMVC.
 - b. Program Provider shall not use or retain data or information gained from the NJMVC unless for the sole purpose of meeting its program and internal audit obligations or otherwise without written consent from the NJMVC.
- 3.12.2 The NJMVC may, in its sole discretion, deny, terminate or cancel participation by any Participating Dealer if any one or more of the following conditions exists with respect to any such Participating Dealer:
- a. Failure to retain its status as a New Jersey licensed motor vehicle dealer with a fixed place of business in New Jersey.
 - b. Failure to follow approved procedures for processing title and registration transactions.
 - c. Failure to follow required or approved payment procedures for registration and title fees after formal warning.
 - d. Failure to comply with any local, State or federal law or regulation.
 - e. Misuse of vehicle registration, title data or NJMVC fees.
 - f. Misuse of any NJMVC controlled item assigned for distribution by a Program Provider.
 - g. Failure to provide requested information or records for the purpose of an audit.
 - h. Failure to properly safeguard and secure any inventory items, controlled items, documents and computer systems.
 - i. Any other unacceptable condition or practice identified by the NJMVC.

4.0 SCOPE OF WORK

4.1 Scope of Services

- 4.1.1 This Agreement grants to Program Provider limited, nonexclusive access to and use of motor vehicle records maintained in the NJMVC's mainframe system. Access to and use of information by Program Provider is limited to that required for participation in the DSP authorized by this Agreement.
- 4.1.2 Program Provider shall perform all services defined by this Agreement in accordance with Title 39 of the New Jersey Statutes and any other laws and/or regulations of the State of New Jersey.

4.2 Program Provider Responsibilities

4.2.1 Authorized Transactions

Program Provider is hereby granted authority to process the transactions and services listed in Appendix A attached to this Agreement and incorporated herein. In addition, Program Provider shall meet the following operational requirements:

- a. Program Provider shall be open for business a minimum of forty (40) hours per week. Program Provider hours of operation cannot inhibit any system access restrictions for opening and end-of-day processes and reconciliation.
- b. Program Provider shall ensure the efficient, secure and accurate pick-up and delivery of motor vehicle transaction documents at a minimum of twice a week from Participating Dealers. If Program Provider retains a subcontractor for this purpose, the subcontractor must electronically track the transfer of documents to determine the status of the deliveries at any point in time.
- c. Program Provider shall be responsible for the professional quality, accuracy, security and timely completion of all services performed under the DSP and this Agreement. Program Provider must achieve a three (3) business day turnaround time for processing transactions submitted by Participating Dealers. Program Provider shall not utilize any of the NJMVC agency locations to process dealer transactions.
- d. Program Provider shall be authorized and responsible to collect from Participating Dealers all fees, payments, surcharges and other sums from Participating Dealers in connection with transactions processed through the DSP. Nothing in this Agreement shall be construed to make the NJMVC a guarantor of payments made by Participating Dealers and transferred by Program Provider.
- e. All monies collected by Program Provider for motor vehicle transactions pursuant to the DSP must be electronically transferred within one business

day to a final depository bank that is a member of the Federal Wire Network and designated by the New Jersey Department of Treasury or such other depository as is acceptable to the NJMVC and the Department of Treasury.

- f. Program Provider shall be responsible for payment of salaries and benefits for its employees, in addition to workers' compensation, liability insurance, bonding, necessary office supplies and equipment, and other expenses connected with providing services under this Agreement.
- g. Program Provider shall respond to transaction-related inquiries received from Participating Dealers within one (1) business day of receipt of inquiry.

4.2.2 Participating Dealer Agreements

Program Provider shall enter into a Participating Dealer Agreement with each Dealer who desires to participate in the DSP. The Participating Dealer Agreement shall include the terms, conditions, requirements and limitations required by this Agreement and shall be in a format to be agreed upon by the NJMVC and Program Provider.

Program Provider shall maintain a file for each Participating Dealer and include in each, as applicable, a copy of each Participating Dealer's New Jersey dealer license, leasing company Power of Attorney (POA) form, Participating Dealer Acknowledgement Form and courier authorization letters.

Program Provider, through its Participating Dealer Agreement, shall require each Participating Dealer to:

- a. Provide the NJMVC, and/or its agents, with access to motor vehicle records for unannounced audits and security checks.
- b. Provide the NJMVC the name and telephone number of a contact person at each Participating Dealer location.

Program Provider shall provide to the NJMVC, on a monthly basis, a list of authorized Participating Dealers. The list shall be electronic, in either Excel or Word, and must be in Portable Document Format (PDF). The list shall be provided to the NJMVC's Program Manager identified in Section 16 of this Agreement.

4.2.3 Participating Dealer Acknowledge Form

Program Provider shall require every Participating Dealer to sign an NJMVC Participating Dealer Acknowledgment Form agreeing to comply with the NJMVC's requirements relating to participation in the DSP. The Participating Dealer Acknowledgment Form shall be provided by the NJMVC to Program Provider.

4.2.4 Training

Program Provider shall provide a copy of its current Participating Dealer Training Program to the NJMVC, including any written materials, guides and manuals. The NJMVC reserves the right to, with and without notice, observe any or all training sessions conducted. Program Provider shall inform all Participating Dealers of any changes in NJMVC policies and procedures affecting the DOSP.

Program Provider shall provide initial training to Participating Dealers and their employees. The training shall include the following:

- a. Document review for conformance to standards;
- b. Problem identification and resolution; and
- c. Correct use of codes and proper format.

Program Provider shall arrange for additional training that may be required due to audit exceptions, program procedures, or other circumstances.

In addition, all Program Provider employees working with motor vehicle records must attend Document Fraud training conducted by the NJMVC Bureau of Security & Investigations, within two months of the start date of this agreement.

4.2.5 Titles

Program Provider shall establish and utilize a title verification process consistent with the requirements of the NJMVC. Program Provider shall be responsible for delivering and mailing the titles to the appropriate Participating Dealer.

4.2.6 Reporting Requirements

Pursuant to a schedule to be provided by the NJMVC, Program Provider shall, on a quarterly basis, provide an operational report listing the items in Appendix B to the NJMVC Program Manager. The operational reports shall be provided at no cost to the NJMVC.

4.2.7 Inventory Control

a. Program Provider shall provide an Inventory Security Plan to the NJMVC's Office of Internal Audit prior to the effective date of this Agreement. Such plan shall include at a minimum:

1. A list, with contact information of a limited number of senior employees authorized to request, accept and be responsible to account for controlled inventory items.

2. Procedures for ordering, accepting, acknowledging and safekeeping controllable inventory from the NJMVC. Must be able to account for and ensure that the items listed on the shipping receipts are in fact received during the shipment prior to acknowledgement.
3. Procedures for orderly distribution of inventory for daily use by employees, and recapturing unused inventory at the end of each business day. Please include "First In First Out" ("FIFO") method of using the inventory to ensure that the older inventory is exhausted first prior to putting newer ones in use. Also ensure that the inventory is used in strict numerical order to maintain continuity and contiguity and to avoid unnecessary breaks in sequence of control numbers.
4. Daily reporting by entering the beginning and ending control numbers of inventory used for each category of items as required on End of Day business report screens.
5. A procedure for reconciling the number of titles physically used with the computer generated title count as shown on the day's End of Day business summary on a daily basis. Document this reconciliation and list explanation on the R09 screen of any discrepancies between the two counts and steps taken to resolve them.
6. A daily manual log of inventory items used is required.
7. Assurance that as each bundle of plates or a sealed box of controlled form inventory is opened, the entire series should be looked over to make certain nothing is missing. Before putting the inventory to actual use for the day, it should be checked to ensure nothing is missing.
8. On the 15th of each month (day before or after if the 15th is not a business day), all controlled inventory should be physically counted and reported to NJMVC.
9. Adequate internal controls over the controlled inventory items must be maintained throughout the lifecycle of the inventory so that if any item(s) becomes missing, it promptly comes to the inventory

manager's attention so that immediate corrective action can be taken (making every effort to locate the item. If the item is ultimately not found, NJMVC Security and Investigations, NJMVC

Internal Audit and the NJMVC Program Manager must be promptly notified via phone call, email and a full report).

10. Procedures for full reconciliation, accounting and return of unused inventory back to the NJMVC when this Agreement expires or is terminated, for any reason.
- b. Once the Inventory Security Plan is approved by the NJMVC, Program Provider shall monitor and secure all assigned inventory under its control in accordance with the Inventory Security Plan. NJMVC hereby authorizes Program Provider approved employees (see section 3.1.7) to handle and inspect inventory, but only as needed to fulfill the following requirements:
1. Program Provider shall maintain a perpetual inventory of all control numbered items. Each inventory item must be traceable by a control number, or a series of control numbers, from acceptance through issuance or assignment to the Participating Dealer.
 2. All inventory must be accepted and made available for distribution by Program Provider within two (2) business days of receipt; no controlled inventory can be utilized or assigned until accepted by Program Provider. Program Provider shall perform, at no cost to the NJMVC, a monthly physical count of the controlled inventory items, and a reconciliation of such counts, as required by the NJMVC. The results of the physical counts shall be reported to the NJMVC within seven (7) days after completion of each physical count.
 3. Program Provider shall notify the NJMVC when inventory is missing or unaccounted for within three (3) business days of the discovery of the missing or unaccounted for inventory. Program Provider shall conduct an investigation and submit a report on the investigation to the NJMVC by no later than five (5) business days after discovery of the missing or unaccounted for inventory and shall provide updates every week until the inventory is found or there has been a final resolution of the matter.

4.2.8 Scanning and Submission of Supporting Documents

The NJMVC anticipates implementing scanning requirements for all motor vehicle transactions subsequent to the signing of this Agreement. Upon implementation of the scanning requirements, Program Provider shall electronically scan and return (or, when requested by the NJMVC, prepare for pick-up) the supporting documents for each business day's transactions pursuant to a schedule to be provided to Program Provider by the NJMVC. The NJMVC shall provide, to Program Provider, the schedule and procedure for scanning no later than ninety (90) days prior to NJMVC's implementation of the scanning procedure for transactions processed through the DSP. At no time shall Program Provider conduct any title transfers without first obtaining all required source documents.

Until such time as the scanning requirements are implemented by the NJMVC and Program Provider receives written notice of same, Program Provider shall, on a daily basis, deliver all transaction paperwork and supporting documents to the NJMVC, Transaction Audit, 225 East State Street, PO Box 121, 5 East, Trenton, NJ 08666 , or its authorized agent, after the transactions are processed.

4.2.9 Participating Dealer Approval

Program Provider shall review and, where appropriate, may pre-approve applications submitted by New Car Dealers to participate in the DSP. Program Provider shall note each acceptable application as “Pre-Approved,” affix the signature of the individual responsible for the granting of such approval, and forward the application to the NJMVC’s Program Manager identified in Section 16. No Used Car Dealer shall participate in the DSP without the written approval of the NJMVC’s Program Manager.

4.2.10 User Access

The Program Provider shall not permit persons other than its authorized employees to use the Motor Vehicle Comprehensive System established for the Program Provider pursuant to this Agreement. The Program Provider shall notify the NJMVC within two (2) business days when an employee authorized to use the Motor Vehicle Comprehensive System is no longer working for the Program Provider or, no longer working in a capacity in which access to the Motor Vehicle Comprehensive System is necessary or, if access to the Motor Vehicle Comprehensive System should be removed for any other reason.

4.3 NJMVC Responsibilities

4.3.1 The NJMVC will provide initial training for each new Program Provider employee on the use of the NJMVC system supporting the DSP. Training shall be conducted at Program Provider’s facilities.

4.3.2 The NJMVC may, in its discretion audit, the registration and title transactions processed by Program Provider through the DSP.

The NJMVC shall deliver all necessary NJMVC required forms, applications and controlled-numbered inventory to the location of the Program Provider.

4.3.3 The NJMVC will supply support to Program Provider via the NJMVC Agency Helpline, Database Corrections, Agency Operations and the Bureau of Business & Government Services.

4.3.4 The NJMVC shall designate a Program Manager who will be responsible for the oversight of the DSP.

5.0 SYSTEM REQUIREMENTS

5.1 System Requirements

Subject to the terms, conditions, specifications and limitations set forth in this Agreement, Program Provider shall:

- 5.1.1 Prior to commencing services under this Agreement, reimburse the NJMVC for the cost of the hardware required to perform services under this Agreement. The cost of the hardware will be provided by the NJMVC to Program Provider. Payment shall be by check payable to the NJMVC. Hardware, software and network connections may take approximately three to four months from payment to the NJMVC to install.
- 5.1.2 Program Provider shall reimburse the NJMVC for the cost of any hardware upgrades or additions required after the effective date of this Agreement. Reimbursement shall be made no later than thirty (30) days from the date of written notice by the NJMVC to Program Provider. Annual support costs may change with the implementation of any upgrade.
- 5.1.3 Program Provider shall refresh the hardware in approximately five (5) years, or as determined by the refresh cycle of any specific equipment/hardware or software.
- 5.1.4 All Personal Information must be protected in accordance with the federal and State DPPA. Equipment storing NJMVC data and information shall be secured in a manner that ensures no unauthorized/unnecessary access will occur. The Program Provider must secure all data and information, including data and information back-ups, from manipulation, sabotage, theft or breach of confidentiality and integrity.

5.2 Ownership of Equipment

The NJMVC shall provide the equipment, devices, and data lines, and the associated communications facilities, wiring and other components necessary to provide a communications interface between Program Provider and the NJMVC's data processing resources, as well as the associated security devices and measures required by this Agreement. These costs will include dedicated circuit between the New Jersey Office of Information Technology ("OIT") and the location of Program Provider's server. Ownership of such equipment shall remain with the NJMVC. The NJMVC shall have the right to secure and remove any such equipment physically located at the Program Provider processing facility upon termination of this Agreement or upon Program Provider's cessation of services covered by this Agreement.

5.3 System Maintenance and Equipment

The NJMVC shall maintain any equipment, device, or data line, wiring or other components of the communication interface between Program Provider and the NJMVC as part of this Agreement. The NJMVC shall repair or replace in a timely manner any equipment or other component of the interface that is defective or deficient. Reasonable access to Program Provider premises and facilities shall be made available to the NJMVC, upon reasonable notice to Program Provider, for

installation, maintenance, testing and repair of any such equipment and other components of the communication interface between Program Provider and the NJMVC.

5.4 Terminals, Peripheral Devices and Transaction Documents

a. Unattended Terminals

Program Provider shall implement procedures to ensure that terminals are not left unattended while the user is logged on.

b. Motor Vehicle Transaction Documents

Program Provider shall implement procedures to ensure that every copy of a motor vehicle record, and copy of any document submitted or generated as part of a motor vehicle transaction, if not returned to the owner, is prepared for pickup, or delivered to, the NJMVC in accordance with the NJMVC procedures regarding motor vehicle transactions under the DSP (to be supplied to Program Provider).

6.0 ADVERTISING

6.1 News Releases and Advertising

Program Provider may engage in promotional activities with respect to the DSP, including the solicitation of potential Participating Dealers, in person, by mail, telephone, internet or other media.

Program Provider shall not issue any news releases or promotional activities pertaining to any aspect of the services provided under this Agreement without the prior written consent of the Program Manager. Program Provider is prohibited from soliciting participation in the DSP at Motor Vehicle Agencies or other NJMVC locations.

6.2 Use of the NJMVC Name

Program Provider may use the NJMVC's name as necessary in connection with its provision of services to the Participating Dealers, with the prior written approval of the NJMVC. Program Provider shall not state or imply that:

- a. The NJMVC requires the use of the DSP by Dealers or members of the public;
- b. The NJMVC recommends the use of the DSP to the exclusion of other similarly available services; or
- c. Program Provider is the exclusive provider of such services.

7.0 INTELLECTUAL PROPERTY RIGHTS

7.1 Certain Intellectual Property Rights Reserved to Program Provider

Program Provider reserves full ownership rights to all forms of intellectual property developed by Program Provider for use in connection with the DSP, including, but not limited to, those intellectual properties developed by Program Provider comprised of program components necessary to collect, assemble and transmit to, and receive from the NJMVC, the inquiries, information and fund transfers which are the subject of this Agreement. These program components include:

- a. Any and all inventions, devices, processes, software and formulas utilized in or comprising any component of the DSP not already in use by the NJMVC.
- b. Any and all trademarks and service marks utilized in connection with the DSP and not already in use by the NJMVC.
- c. Any and all written material relating to the DSP that may be the subject of protection under the copyright laws of the United States or foreign countries, including, without limitation, all user and training manuals and other publications relating to the program not developed by the NJMVC.

7.2 Trade Secrets; Patent, Trademark, Service Mark and Copyright Protection

The NJMVC shall not knowingly interfere with any efforts undertaken by Program Provider to register patents, trademarks, service marks or copyrights associated with the DSP that have not been developed in whole or in part by the NJMVC.

The Parties acknowledge that all proprietary information and materials developed by Program Provider in the course of developing the DSP including, without limitation, all formulas, patterns, compilations, programs, devices, methods, techniques and processes, may constitute “trade secrets” of Program 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, except to the extent required by law to be disclosed.

7.3 Plans, Specifications, Programs, Manuals and Related Materials

The parties acknowledge that plans, specifications, drawings, manuals, computer programs and related materials developed by Program Provider with respect to the DSP remain the sole property of Program Provider, and that review, consultation of, or possession of such materials by the NJMVC does not constitute a waiver of Program Provider property interests therein. The NJMVC agrees to return or destroy, or to afford Program Provider reasonable opportunities to collect, all such materials upon the expiration or termination of this Agreement. NJMVC shall keep such information in the strictest confidence. The NJMVC shall only use such information in connection with the DSP and shall not disclose such information to any party, except its employees with a need to know such information who have been informed of its confidential nature, and except to the extent as required by law to be disclosed.

The NJMVC will treat all plans, specifications, drawings, diagrams, software, computer programs, procedures, processes and other proprietary materials relating to

the DSP and as vendor proprietary information under Program Provider's control for purposes of the New Jersey Open Public Records Act, and agrees not to disclose such information except to the extent as required by law to be disclosed.

8.0 WARRANTY, LIABILITY, INDEMNIFICATION, ACCIDENTS AND MISUSE OF RECORDS

8.1 Warranty

Program Provider warrants that the DSP shall at all times be in compliance with the requirements contained in this Agreement.

8.2 Limitation of Liability

Neither the State of New Jersey nor the NJMVC shall be liable for any monetary damages resulting from the loss of data, the use of products, or its performance or nonperformance under this Agreement. In no event shall the State of New Jersey or the NJMVC be liable for any indirect, special, incidental, or consequential damages resulting from the loss of data, the use of products, or its performance or nonperformance under this Agreement, whether or not the State of New Jersey or the NJMVC was advised of the possibility of such damages.

8.3 Liability and Indemnification

Program Provider shall indemnify, defend and save harmless the NJMVC and the State of New Jersey and their employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which arise from or result directly or indirectly from the services or other obligations undertaken by Program Provider, its officers, employees, subcontractors and Participating Dealers pursuant to this Agreement. This indemnification obligation is not limited by, but is in addition to, the insurance obligations contained in this Agreement.

8.4 Liabilities Arising from Accidents

Nothing in this Agreement shall be construed to impose on the State of New Jersey or the NJMVC any liability arising from accidents to persons served by Program Provider. Nothing contained in this Agreement shall limit or affect the responsibility of Program Provider and the Participating Dealers for injuries to persons going on or about the premises where the services provided hereunder are delivered. Nothing contained in this section shall be construed to limit the sovereign immunity of the State of New Jersey.

9.0 INSURANCE

9.1 Performance Bond

Program Provider shall maintain, at its own expense throughout the term of this Agreement, a bond indemnifying the NJMVC for any loss the NJMVC incurs as a result of the performance, or failure to perform, by Program Provider or any of its employees, agents or subcontractors under the terms of this Agreement. Such bond shall be in the amount of five hundred thousand dollars (\$500,000) and shall be issued by a company licensed to issue surety bonds in the State of New Jersey. The bond shall be subject to the approval of the NJMVC and shall provide for a thirty (30) day written notice to the NJMVC prior to cancellation. A copy of the bond shall be provided to the NJMVC's Program Manager upon execution of this Agreement.

9.2 Workers' Compensation

Program Provider shall procure and maintain workers' compensation insurance as required by the Workers' Compensation Laws of the State of New Jersey and any other applicable Workers' Compensation Law. Endorsements and references thereto on all certificates of insurance and employer's liability shall be in an amount not less than five hundred thousand dollars (\$500,000) or as otherwise required by law.

9.3 Commercial General Liability Insurance

Program Provider shall procure and maintain commercial general liability insurance in a per occurrence amount of not less than one million dollars (\$1,000,000) for bodily and personal injury and for property damage, also naming the State of New Jersey and its officers and employees as an "additional named insured." The policy shall have a "contractual liability endorsement" specifically referencing this Section 10. Such insurance shall provide for a thirty (30) day written notice to the Chief Administrator and the NJMVC's Program Manager prior to cancellation. Proof of such insurance shall be provided to the NJMVC's Program Manager upon execution of this Agreement.

10.0 RETENTION OF RECORDS AND AUDIT

10.1 Record Retention

Program Provider shall retain all transactional related records and documents relating to the DSP for two (2) years from the time an activity takes place and shall make those records available for inspection and audit by authorized representatives, agents or contractors of the State. All documentation, reports and files shall be kept at Program Provider's New Jersey Office.

10.2 Audit

The NJMVC, at its sole option, and at the Program Provider's expense, may, at any time throughout the term of this Agreement and up to three (3) years after the expiration or termination of this Agreement, audit, engage an independent auditor to review and audit, or require Program Provider to audit or engage an independent auditor to review and audit, the books and records and/or operations of Program Provider in order to determine compliance with this Agreement. Program Provider shall provide the NJMVC with

access to its books and records pertaining to transactions performed pursuant to this Agreement, for the purposes of audits and re-audits.

11.0 TRANSACTION CORRECTIONS AND NON-COMPLIANCE

11.1 Transaction Corrections and Fees

All transaction correction requests shall be sent to the NJMVC Database Corrections Unit, 225 East State Street, PO Box 141, Trenton, NJ. 08666.

The NJMVC may assess a correction fee if the NJMVC, in its sole discretion determines that any transaction processed by Program Provider under this Agreement is unacceptable solely due to Program Provider's error, omission, or failure to comply with the policies and procedures established in accordance with or by the applicable provisions of Title 39 of the New Jersey Statutes, or any other related rule, regulation or procedure. Any correction fee shall be based, to the extent practicable, upon the actual cost incurred by the NJMVC to review and correct the transaction.

Non-Compliance

The NJMVC reserves the right to issue a written formal complaint against Program Provider for non-compliance in the areas identified in Sections a. and b. below. Formal complaints will not be issued in relation to an isolated incident, but rather to address a pattern where Program Provider routinely fails to fulfill requirements. Formal complaints filed against Program Provider will be used to evaluate Program Provider's performance and may affect future contract renewals and consideration for future NJMVC service programs.

- a. Inventory Control – Failure to comply with the RFA with respect to Inventory Control.

12.0 ANTI-DISCRIMINATION

Program Provider agrees not to discriminate in employment and agrees to abide by all anti-discrimination laws including, but not limited to, those contained within N.J.S.A. 10:2-1 through 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 and 10:5-38.

13.0 AMERICANS WITH DISABILITIES ACT

Program Provider acknowledges that it must comply with all provisions of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. (the "Act"), and its implementing regulations, which prohibit discrimination on the basis of disability by public entities in all services, programs and activities provided or made available by public entities. In providing any aid, benefit or service pursuant to this Agreement, Program Provider agrees that its performance under this Agreement shall be in strict compliance with the Act and the regulations.

14.0 NON-SOLICITATION

In executing this Agreement, Program Provider does hereby warrant and represent that this Agreement has not been solicited or secured, directly or indirectly, in a manner contrary to the laws of the State of New Jersey and that said laws have not been violated and shall not be violated by any conduct, including the paying or giving of any fee, commission, compensation, gift, gratuity or consideration of any kind, directly or indirectly, to any State employee, officer or official.

15.0 SERVICES PERFORMED UNDER AGREEMENT

This Agreement constitutes a “State Contract” as defined by N.J.S.A. 52:34-13.2, and as such, all services described and performed under this Agreement shall be performed within the United States of America.

16.0 CONTACT INFORMATION

All notices, amendments, questions or problems that arise in connection with this Agreement shall be sent, in writing, to the individuals designated as contact persons below. Each Party is required to immediately provide written notification to the other Party when a contact person’s information changes.

For the NJMVC:

Program Manager
Manager, Bureau of Business & Government Services
New Jersey Motor Vehicle Commission
225 E. State Street, PO Box 122
Trenton, NJ 08625-0122

Phone: (609) 292-8607

Fax: (609) 341-2732

For Program Provider:

Program Provider Motor Vehicle Operations

Contract Manager

This Agreement may be signed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties by their authorized representatives have executed this Agreement on the dates hereinafter stated.

NEW JERSEY MOTOR VEHICLE COMMISSION

Witness:

By: _____
Jeanne D. Ashmore
Acting Chair and Chief Administrator

By: _____
Name
Title

Dated: _____

(Applicant Name)

Witness:

By: _____

By: _____
Name
Title

Date: _____

APPENDIX A

DEALER SERVICES PROGRAM (DSP) AUTHORIZED TRANSACTIONS

Program Provider is authorized to provide the following services and/or transactions to Participating Dealers (authorized services or transactions may be changed at the discretion of the NJMVC):

- Process applications for vehicle registrations and license plates, initial renewals and transfers for new or leased vehicles;
- Process duplicate registrations requested;
- Process applications for vehicle title, registration and license plates for initial /renewal transactions for new and used motor vehicles as well as motorcycles, trailers, all-terrain vehicles (“ATVs”), boats, recreational vehicles (“RVs”), and low speed vehicles (“LSVs”);
- Process applications for certificates of title (issued by New Jersey, another state or U.S. Federal District) for new or leased vehicles, including leased buybacks;
- Process applications for “dealer only” certificates of title (title only);
- Process registration renewal transactions for taxis, limousines, farm trucks, farm use vehicles and omnibus vehicles;
- Process registration and title change transactions to add spouse names;
- Process initial registration transactions for vehicles that have already been titled;
- Process registration transfer transactions for vehicles that have already been titled;
- Process dedicated plate issuance and renewal transactions;
- Accept and process surrendered license plates;
- Issue to the dealer the license plates and registration cards generated by the above registration transactions;
- Supply Dealer Reassignment forms; and
- Supply New Car Inspection Stickers.

APPENDIX B

DEALER SERVICES PROGRAM (DSP) OPERATIONAL REPORTS

Program Provider shall, on a quarterly basis, provide the NJMVC Program Manager an operational report listing the following:

- The number of Authorized Dealers participating in the DSP;
- The number of Authorized Dealers removed from participation in the DSP;
- The number of Dealers added as authorized dealers to participate in the DSP;
- Performance Measures – the average turn-around time to process (in business days), and the number of returned transactions;
- The current number of Program Provider’s full-time and part-time employees, along with any additions and removals;
- The number of dealers trained; and
- Other significant events that may have affected operations covered under the Agreement.