



VEHICLE DATA LICENSE AGREEMENT

SAMPLE – VODS OR VOIDS SERVICE PRIVATE SECTOR ENTITIES

THESE ARE SAMPLE TERMS AND CONDITIONS. ACTUAL TERMS AND CONDITIONS MAY VARY.

SAMPLE TERMS AND CONDITIONS

This Vehicle Data License Agreement (hereinafter called "Contract") is entered into by and between the State Washington, Department of Licensing (hereinafter called "DOL"), and the Contractor named on page one (1).

1. PURPOSE

The purpose of this Contract is to provide terms and conditions under which DOL will provide its Bulk Vehicle Data to the Contractor. DOL is at all times the owner of the Data and provides a license to the Contractor to use the Data only as provided herein. This Contract ensures that DOL vehicle and/or vessel Data is provided, protected and is used only for purposes authorized by state and federal law governing the release of such Data and is pursuant to chapters 46.12, 42.56 Revised Code Washington (RCW), Washington Administrative Code (WAC) 308-93, WAC 308-10, Chapter 18 USC Sec. 2721 - 2725 Driver's Privacy Protection Act (DPPA), and Executive Order 97-01, as currently written or hereafter amended.

2. PERMISSIBLE USE

It is the Contractor's responsibility to know and understand the uses permitted by both federal and state laws. Regardless of what is permissible by law, Contractor may only use Data as authorized by this Contract. Contractor is not authorized to use or release Personal Information for direct marketing or Commercial Use. The Contractor shall protect Data collected, used, or acquired in connection with this Contract, against unauthorized use, disclosure, modification or loss. The Contractor shall ensure its directors, officers, employees, Subcontractors, Subscribers and agents use the Data solely for the Permissible Uses set forth in this Contract.

Uses other than those explicitly listed below are *strictly prohibited*. Contractor is responsible to ensure that use of the Data beyond that which is specifically authorized herein are not permitted; including Subcontractors' and Subscribers' uses of Data.

Additionally, Attachment B, *File Layout*, identifies those Data fields the Contractor will receive. In accordance with RCW 46.12.630(7) or any other applicable state or federal law, this Contract will be terminated for Default if any of the Data or Data fields is improperly disclosed, exposed or otherwise utilized and will be liable for damages as allowed by law. The Contractor is wholly responsible for the safekeeping of any DOL Data provided under this Contract.

The Data provided in this Contract contains Personal Information as defined in this Contract.

Contractor is receiving Data as a "Legitimate Business" as defined by WAC 308-10-010 and therefore must not publish, re-disclose, or use Personal Information to contact individuals as

required by RCW 46.12.630. (Note: Delete this sentence if the data requester is not requesting data as a legitimate business for research or statistical purposes.) Contractor may use Data provided under this Contract only for the following uses, as permitted by law:

PERMISSIBLE USE DESCRIPTION	
Only permissible uses allowed by DOL will be included in the contract; the others will be deleted.	
I.	<p>To carry out the provisions Titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. Sec. 1231 et seq.), the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), and 49 U.S.C.S. Sec. 30101-30183, 30501-30505, and 32101-33118, as these acts existed on January 1, 2014, or such subsequent date as may be provided by DOL by rule. This Permissible Use is pursuant to RCW 46.12.630 (1).</p> <p>DOL may only provide a vehicle or vehicle component manufacturer, or its authorized agent, lists of registered or legal owners who purchased or leased a vehicle manufactured by that manufacturer or a vehicle containing a component manufactured by that component manufacturer. Manufacturers or authorized agents receiving information on behalf of one manufacturer must not disclose this information to any other third party that is not necessary to carry out the purposes of this use.</p>
II.	<p>To conduct research activities and produce statistical reports, as long as the entity does not allow Personal Information received under this section to be published, re-disclosed, or used to contact individuals. This Permissible Use is pursuant to RCW 46.12.630(2a).</p> <p>DOL may only provide the manufacturer of a motor vehicle, or the manufacturer of components contained in a motor vehicle, or their authorized agent, the lists of registered or legal owners who purchased or leased a vehicle manufactured by that manufacturer or a vehicle containing components manufactured by that component manufacturer.</p>
III.	<p>Any governmental agency of the United States or Canada, or political subdivisions thereof, to be used by it or by its authorized commercial agents or contractors only in connection with the enforcement of motor vehicle or traffic laws by, or programs related to traffic safety of, that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor can be used shall be provided to such agent or contractor. This Permissible Use is pursuant to RCW 46.12.630 (2b).</p>
IV.	<p>Any insurer or insurance support organization, a self-insured entity, or its agents, employees, or contractors for use in connection with claims investigation activities, antifraud activities, rating, or underwriting. This Permissible Use is pursuant to RCW 46.12.630 (2c).</p>
V.	<p>Any local governmental entity or its agents for use in providing notice to owners of towed and impounded vehicles. This Permissible Use is pursuant to RCW 46.12.630 (2d).</p>
VI.	<p>A government agency, commercial parking company, or its agents requiring the names and addresses of registered owners to notify them of outstanding parking violations.</p>
VII.	<p>Any business regularly making loans to other persons to finance the purchase of motor vehicles, to be used to assist the person requesting the list to determine</p>

	ownership of specific vehicles for the purpose of determining whether or not to provide such financing. This Permissible Use is pursuant to RCW 46.12.630 (2g).
VIII.	A company or its agents operating a toll facility under chapter 47.46 RCW or other applicable authority requiring the names, addresses, and vehicle information of motor vehicle registered owners to identify toll violators. This Permissible Use is pursuant to RCW 46.12.630 (2h).
IX.	May be Tailored to Contractor as allowed by law: Usage allowed by chapter 42.56 RCW for a list of Records containing no Personal Information

3. DEFINITIONS

As used throughout this Contract, the following terms shall have the meanings set forth below:

- A. **“Business Days”** means standard business days and hours for the Department of Licensing is Monday through Friday 8:00 a.m. to 5:00 p.m. Weekends and Washington State holidays are not included when counting the number of business days.
- B. **“Commercial Use”** means using or intending to use Data for the purpose of facilitating a profit-expecting business activity, except as provided in RCW 46.12.630.
- C. **“Contract”** mean this Vehicle Data License Agreement including all incorporated terms and conditions, documents, and attachments.
- D. **“Contractor”** means that agency, firm, provider, organization, individual or other entity performing services or obtaining Data under this Contract, including all Subcontractors.
- E. **“Contract Manager”** means the representative identified of either party who is delegated the authority to administer this Contract upon the behalf of its respective party.
- F. **“Data”** means information contained in the vehicle or vessel Record provided to Contractor under this Contract.
- G. **“Data Security”** means defending information from unauthorized access, use, disclosure, disruption, modification, perusal, inspection, recording or destruction. This applies regardless of the form the Data may take (electronic, physical, etc.).
- H. **“Data Security Breach”** or **“Breach”** means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of Personal Information as defined in RCW 19.255.010 and RCW 42.56.590.
- I. **“Data Security Requirements”** means the minimum requirements, as outlined in Attachment A, *Data Security Requirements*, which the Contractor must comply with to ensure DOL Data is secure.
- J. **“Default”** means the failure of the Contractor to perform an act, contractual requirement or obligation, and includes the violation of any state or federal laws, rules and statutes associated with this Contract.
- K. **“Legal owner”** means the following Personal Information to include name, address, city, and state of the party listed as legal owner of a vehicle or vessel.
- L. **“Permissible Use”** means only those uses authorized in this Contract.
- M. **“Personal Information”** means information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the five-digit zip code), telephone number, or medical or disability information.
- N. **“Record”** or **“Records”** means the compilation of data associated with vehicles, motor vehicles and/or vessels as defined in Washington State law (RCWs 46.04.670, 46.04.320 and 88.02.310).
- O. **“Registered owner”** means the following Personal Information to include name, address, city, and state, of the party listed as registered owner of a vehicle or vessel.

- “Registered Owner” does not include the five-digit zip code.
- P. **“RCW”** means Revised Codes of Washington. All references in this document to RCW chapters or sections shall include any successors, amended, or replacement statutes, as currently written or hereafter amended.
- Q. **“Secure Data Transfer”** means a method that protects the Data in transit to prevent viewing and manipulation by another.
- R. **“Subcontractor”** means one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "Subcontractor" and “Subcontractors" mean Subcontractor(s) in any tier.
- S. **“Subscriber”** means any customer, agency, firm, provider, organization, individual or other entity engaged in doing business with the Contractor to obtain, or otherwise utilize or receive benefit from the Data received from DOL, and includes customers that may be purchasing or receiving services or a product produced by Contractor. A Subscriber must be one who is entitled to the Data with a Permissible Use as authorized by this Contract.
- T. **“Vehicle Data License Agreement”** shall also mean the same as “Contract”.
- U. **“WAC”** means the Washington Administrative Code. All references in this document to WAC chapters or sections shall include any successors, amended, or replacement statutes, as currently written or hereafter amended.

4. TERMS AND CONDITIONS

All rights and obligations of the parties to this Contract shall be subject to and governed by the following: *Terms and Conditions* contained in the text of this Contract; Attachment A, *Data Security Requirements*, and Attachment B, *File Layout*, which are attached to and incorporated herein.

5. PERIOD OF PERFORMANCE

The term of this Contract is three (3) years from the date of execution. Subject to its other provisions, this Contract shall begin on and end as stated on page one (1) unless terminated sooner or extended by DOL as provided herein. This Contract may be extended for up to five (5) years at the exclusive option of the DOL and shall be affected by the extension of a written amendment.

Contractor will complete and sign a new Vehicle/Vessel Contract Application (available at DOL’s website: www.dol.wa.gov) at least forty-five (45) days prior to the expiration date of this Contract, if Contractor wishes to continue receiving Data from DOL. DOL must receive the application before an extension is granted. If there is any lapse in the Period of Performance, a new contract will be required and DOL will charge a set up fee to re-establish access.

6. FEE SCHEDULE

The following rates apply:

FEE SCHEDULE		
1.	*Monthly Fee	Cost
	Monthly fee to provide Data	\$ _____

2.	New and Updated Record Fee for each updated unique Record (VIN) for each Data file	
	For January 1, 2015 through December 31, 2015	\$ 0.01
	For January 1, 2016 through December 31, 2020	\$ 0.02
	Beginning January 1, 2021	\$ 0.025
3.	*Additional Fees	
	Requests for additional Data runs, reruns, or restoration of Data delivery	\$ 47.99 / hourly

* Monthly Fee and Additional Fees subject to change based on DOL actual costs.

Contractor will prepay to DOL \$_____ for the cost of the initial file set up.

7. ADDITIONAL DATA RUNS OR RERUNS

Requests from Contractor for Data runs at frequencies or dates not already agreed upon within this Contract will require additional fees. Each additional Data run or rerun will be billed at a rate(s) outlined in this Contract. Additional set up fees may also apply. "Rerun" means the re-delivery of a previous sent file unless there was a corruption in the original file.

8. PAYMENT PROCEDURES

DOL will invoice Contractor for Data provided under this Contract, or as otherwise outlined herein. Contractor will pay DOL within thirty (30) days of receipt of invoice. Each payment will clearly reference the invoice number and Contract number. If the Contractor fails to pay any invoice within thirty (30) days of being billed, DOL may cease regularly scheduled transmittals until payment is made in full. Payment will be made to:

Department of Licensing
Revenue Accounting
P.O. Box 3907
Seattle, WA 98124-3907

DOL may suspend Data transmissions or terminate this Contract for Default if Contractor continues to fail to make timely and complete payments. Contractor will be required to pay additional fees to restore Data transmission.

9. UNDERPAYMENTS, ASSERTION OF LIEN AND INTEREST

In the event DOL establishes underpayments made by the Contractor under this Contract, DOL may secure payment, plus interest to be determined if any, through the filing of a lien against the Contractor's real property, and/or by requiring the posting of a bond, assignment of deposit, and/or some other form of security acceptable to DOL. Unpaid debt may be forwarded to a collection agency and additional interest or fees may apply.

10. CONTRACT COMMUNICATIONS

- A. The Contractor's Contract Manager listed on page one (1) shall be responsible for all communications pertaining to this Contract.

- B. The Contractor is required to notify DOL Contract Manager listed on page one (1) in writing within three (3) Business Days of changes to: business name, ownership, business address, phone number, email address, or Contract Manager or his/her contact information.

11. PUBLICITY

The Contractor must submit to DOL all advertising and publicity matters relating to this Contract which DOL's name can be implied or is specifically mentioned, including the use of DOL's logo. The Contractor must not publish or use such advertising and publicity matters without prior written consent of DOL. If DOL approves any advertising and publicity matter, DOL reserves the right to add a disclaimer. Contractor must not use the Washington State seal under any circumstance.

12. INSURANCE

A. Required Coverages

At Contractor's sole cost and expense, Contractor shall procure and maintain in effect from and after the Contract execution and for the duration of the Contract the insurance coverages described herein. Insurance may be maintained with one or more carriers, each of which must: (a) be authorized to do business in Washington State, and (b) have a financial strength rating of A- or better and a financial size category of A-XIII or better, each as reported in the most recent edition of Best's Insurance Reports (or an equivalent rating from a similar). Any insurance or self-insurance available to DOL shall be in excess of, and non-contributing with, any insurance that Contractor is required to procure and maintain. Contractor's insurance policies shall apply on a primary basis. To the extent that claims are paid under any insurance coverage resulting in a reduction of the remaining coverage amounts, Contractor shall procure additional insurance as needed to continually meet and maintain the coverage amounts set forth in this Contract. Contractor must notify DOL within ten (10) Business Days if a claim has been made under the Commercial General Liability policy.

B. Additional Insureds

DOL shall be named as an additional insured on the General Liability policy.

C. Notice of Cancellation

Contractor, or its insurer, shall provide written notice thirty (30) days in advance of the cancellation of any insurance required hereunder.

D. Certificates of Insurance

- a. Upon Contract execution, Contractor must ensure a valid Certificate of Insurance is received by DOL. Contractor will request that its insurance company submit to DOL's Contract Manager a Certificate of Insurance which outlines at the least the coverage and limits defined in this section.
- b. Contractor will submit renewal certificates on a yearly basis during the term of this Contract and it must be received on or before ten (10) Business Days following renewal policies.
- c. Failure to provide DOL with the Certificates of Insurance as required may result in immediate termination for Default of this Contract.

- d. The Certificates of Insurance must include the DOL Contract number for this Contract.

E. Insurance Coverages

Type of Insurance Coverage	Minimum Policy Limits		Additional Requirement
	Per Occurrence / Claim	Annual Aggregate	
Industrial Insurance	Per state law requirements	Per state law requirements	The policy shall be written to meet the statutory requirements for the state in which the work is to be performed, including occupational disease. The policy shall cover all Contractor's employees, including as may be required of an "employer: as defined in Title 51 RCW, and shall be in full compliance with Title 51 RCW.
Commercial General Liability	\$1,000,000	\$2,000,000	Must be an occurrence-based coverage. The policy must include a waiver of subrogation in favor of DOL.

In addition to the required insurance outlined above, Contractor is encouraged to acquire the appropriate types and amounts of insurance to mitigate DOL's exposure and costs for expenses related to Data Security Breaches and unauthorized access. If Contractor purchases any insurance policy to cover any Breaches covering the Personal Information provided in this Contract, such policies must include a waiver of subrogation in favor of DOL.

13. DATA SECURITY REQUIREMENTS

Contractor must comply with all Data Security Requirements as outlined in Attachment A, *Data Security Requirements*. If a change is made to DOL's Data Security Requirements, this Contract may be amended to incorporate the new requirements.

14. OFFSHORING

Contractor represents, warrants and covenants to DOL that it will not, except as may otherwise approved in advance by DOL in writing:

- a. directly or indirectly (including Subscribers and through the use of Subcontractors) transmit any Personal Information outside the United States; or
- b. allow any Personal Information to be accessed by Subcontractors or Subscribers from locations outside the United States.

Notwithstanding for foregoing, Contractor represents and warrants to DOL that the primary, backup, disaster recovery and other sites for storage of Personal Information shall only be provided from locations in the United States. Backup Data containing Personal Information must be encrypted.

To the extent any law or regulation enacted after this Contract is executed or any policy or circumstances exist or are created which have, or may have, an adverse impact on DOL with respect to legal compliance or its relationships with DOL, Contractor acknowledges and agrees that, to the extent technically feasible and commercially reasonable, it shall change the delivery of any affected offshore services in a manner which enables DOL to avoid such adverse impact; or if the foregoing objective cannot be met to the satisfaction of either party, then the parties will engage in good faith negotiations to arrive at a mutually agreeable reasonable alternative. Further, in any case where access to Personal Information is permitted outside the United States, Contractor shall:

- a. comply with the *Data Security Requirements* in Attachment A;
- b. implement software controls to permit “view only” access to Personal Information, which controls shall prohibit downloading, printing, copying and/or further transmitting or transferring Personal Information;
- c. inform any personnel with access to the Personal Information of the restrictions contained herein;
- d. implement a program to monitor compliance with the terms contained herein; and
- e. immediately notify DOL of any violations of these terms and conditions.

15. POLICIES AND PROCEDURES

Contractor must maintain and enforce policies and procedures consistent with this Contract. Such policies and procedures must include at a minimum methods for mitigating risks, employee training, and incident response. Contractor will provide a copy of its policies and procedures within thirty (30) Business Days of DOL’s request.

16. CONFIDENTIALITY OF PERSONAL INFORMATION

The Contractor shall not use or disclose Personal Information in any manner that would constitute a violation of the Permissible Use of this Contract.

In addition to the Data Security Requirements described herein, the Contractor agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure of Personal Information. The security measures shall not be less than the standards promulgated by the Washington State Office of the Chief Information Officer (OCIO). The Contractor shall notify DOL of any Data Security Breach of Personal Information, in accordance with Attachment A, *Data Security Requirements*.

In accordance with RCW 46.12.630(7), violations of Permissible Use may result in termination without an opportunity to cure the violation and the demand of the destruction of Data in accordance with Attachment B, *Data Security Requirements*.

Contractor will ensure their agreements with Subcontractors and Subscribers provide for protection of all Personal Information as well as limitations on the use of all Personal Information to Permissible Uses under RCW 46.12.630.

17. AMENDING DATA

DOL will not be liable for any delays in furnishing Data under this Contract nor shall DOL be liable for any errors which occur in compilation of Data. The Contractor shall incorporate any amendments into all copies maintained by the Contractor, and require its Subcontractors and Subscribers.

18. AUDITS

A. Minimum Audit Requirements

Pursuant to RCW 46.12.630, within the first six (6) months of the initial Contract execution, and every two (2) years thereafter, a third-party or DOL audit(s) must be conducted that demonstrates whether the security and use of Personal Information under this Contract is in compliance with the terms of this Contract and Washington Law.

Contractor shall obtain an external audit for services related to this Contract to be performed by an independent third-party auditor and at a minimum meet American Institute of Certified Public Accountants' (AICPA), Certified Information Privacy Professional (CIPP), ANSI-ASQ National Accreditation Board (ANAB) or other nationally recognized certification approved by DOL. Alternatively, should Contractor choose not to perform an external audit or DOL does not accept an audit pursuant to RCW 46.12.630, DOL will obtain an audit at the cost of the Contractor.

The audit(s) must cover both Data Security and Permissible Use as required by RCW 46.12.630 generally. The scope must include a statistically valid sampling of all recipients of Personal Information. At a minimum, the audit(s) must determine whether Permissible Use and Data Security policies, procedures and controls are in place to ensure compliance with this Contract and state and federal law. Also, the audit(s) must include a statistically valid sampling of all Subscribers' use of Personal Information to validate controls through the process to ascertain whether there is compliance with Permissible Use and Data Security requirements in accordance with state and federal law.

Data Security audits must demonstrate compliance with the data security standards adopted by the Office of the Chief Information Officer.

Contractor must provide a complete copy of the audit and its results to DOL with thirty (30) days of the completion of such an audit.

Contractor will collaborate with DOL to develop the specifics for audit scope and other elements. If the third party audit meets the standards set forth in RCW 46.12.630, and this Contract, DOL must accept the audit.

B. Corrective Action Plans

Within thirty (30) days after receiving the results of an audit, Contractor must submit a corrective action plan for each violation identified by an audit. For each violation, the corrective action plan must outline the following:

- Steps to be taken to correct the violation; and

- A timeline for the steps, including the anticipated completion date.

C. Audits – Hold Harmless

The Contractor agrees to hold DOL and its selected auditing firm harmless from any real or perceived damages to the Contractor's company as a result of DOL audit findings.

19. SUBCONTRACTING

Contractor may enter into agreements with Subcontractors for any work, services or data sharing as provided under this Contract. This clause does not include contracts of employment between a party and personnel assigned to work under this Contract. Contractor is responsible for ensuring that all terms, conditions, securities, assurances and certifications set forth in this Contract are carried forward to any Subcontractors.

20. DISQUALIFICATION

Pursuant to RCW 46.12.630(7), DOL will implement a process to track those Subcontractors or Subscribers disqualified from gaining access to Data. Such disqualification will be based on evidence of unauthorized disclosure of Data.

21. DPPA REQUIREMENTS

In addition to the requirements outlined in this Contract, the Contractor will maintain records in accordance with the Driver's Privacy Protection Act (DPPA). Upon request, Contractor will provide DOL with a copy of such records. If the retention requirements conflict, Contractor will keep such records for the longest period of time required.

22. CONTRACTOR'S PROPRIETARY INFORMATION

The Contractor acknowledges DOL is subject to chapter 42.56 RCW, *Public Records Act*, and this Contract shall be a public record as defined in RCW 42.56.040 through 42.56.550. Any specific information submitted to DOL and claimed by the Contractor to be confidential or proprietary, must be clearly identified as such by the Contractor. To the extent consistent with chapter 42.56 RCW, DOL shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's proprietary information and DOL intends to release the information, DOL will notify the Contractor of the request and notify the Contractor of the date records will be released to the requester. It will be the responsibility of the Contractor to obtain any necessary court order enjoining that disclosure by the stated release date. If the Contractor fails to obtain the court order enjoining disclosure, DOL will release the requested information.

23. DISPUTES

The parties agree that time is of the essence in resolving disputes. The following are steps in the dispute process:

- A. When a bona fide dispute concerning a question of fact arises between DOL and the Contractor and it cannot be resolved, either party may request a dispute hearing with DOL's Contracts Office. The request for a dispute hearing must:
- be in writing; state the disputed issues;

- state the relative positions of the parties;
- state the Contractor's name, address, and DOL Contract number;
- be mailed to the other party's Contract Manager within three (3) Business Days after the parties agree they cannot resolve the dispute; and
- be mailed to:

Department of Licensing
Contracts Office
P.O. Box 9047
Olympia WA 98507-9047

- B. The responding party will have five (5) Business Days to respond in writing to the requesting party's statement. This response will be sent to both the DOL Contracts Office and the requesting party.
- C. The DOL Contracts Office shall review the written statements of the parties and reply in writing to both parties within ten (10) Business Days. The DOL Contracts Office may extend this period if necessary by notifying the parties.
- D. The decision of DOL's Contracts Office shall be final and conclusive unless, within five (5) Business Days from the date DOL mailed the decision, the Contractor requests a dispute panel. This request must be in writing to DOL's Contracts Office.
- E. If a dispute panel is requested, DOL and the Contractor shall each appoint a member to the dispute panel within five (5) Business Days. DOL and the Contractor shall jointly appoint a third member to the dispute panel within the next five (5) Business Days.
- F. The dispute panel shall review the written descriptions of the dispute, gather additional information as needed, and make a decision on the dispute in the shortest practical time with the majority prevailing.

24. TERMINATION FOR DEFAULT

- A. If the Contractor violates any applicable state or federal law, or any material term, condition or requirement of this Contract, DOL may give the Contractor written notice of the violation, and terminate the Contract immediately.
- B. Alternatively, DOL at its sole discretion may give Contractor the opportunity to correct the violation(s) as directed by DOL. Such direction will include required action steps and timeframes. If the violation is not corrected, DOL may, at its sole discretion, immediately terminate this Contract for Default by written notice to the Contractor. Upon termination, the Contractor shall be liable for damages as authorized by law.
- C. Contractor may be subject to penalties in accordance with RCW 46.12.640, or as otherwise allowed by law.
- D. Notice of Default or notice of termination shall be conclusively deemed to have been delivered to, and received by Contractor, as of midnight of the third day following the date of its posting in the United States Postal Service mail.

25. CONFLICT OF INTEREST

DOL may, in its sole discretion, by written notice to the Contractor, terminate this Contract if it finds, after due notice and examination by DOL, there is a violation of the Ethics in Public Service Act, chapter 42.52 RCW; or any similar statute involving the Contractor in the performance of work under this Contract.

In the event this Contract is terminated as provided above, DOL will be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor.

The rights and remedies of DOL provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which DOL makes any determination under this clause shall be an issue and may be reviewed as provided in this Contract.

26. TERMINATION FOR CONVENIENCE

Either party may terminate this Contract by giving written notice to the other party at least five (5) Business Days before the effective date of termination. If this Contract is so terminated, DOL is entitled to payments required under terms of this Contract for services rendered prior to termination. Written notice may include, but is not limited to, notice provided by United States Postal Service mail, email or facsimile.

27. FUNDING CONTINGENCY

In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, DOL may terminate this Contract without advance notice and without penalty to the state of Washington. At the sole discretion of DOL, this Contract may be subject to renegotiation under any new funding limitations and/or conditions.

28. TERMINATION PROCEDURE

Upon termination of this Contract, in addition to any other rights provided in this Contract, Contractor will follow requirements outlined in Attachment A, *Data Security Requirements*.

Failure to agree with Contract termination shall be a dispute within the meaning of this Contract.

The rights and remedies of DOL provided in this Contract, shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a notice of termination, and except as otherwise directed by DOL, the Contractor shall:

- Place no further orders for Secure Data Transfer files.
- Settle all outstanding liabilities and all claims arising out of such termination, with the approval or ratification of DOL to the extent required, which approval or ratification shall be final for all the purposes of this section.
- Take such action as outlined in Attachment A, *Data Security Requirements*, as it

pertains to destruction of Data.

29. LICENSING STANDARDS

The Contractor shall comply with all applicable local, State, and federal licensing requirements necessary in the performance of this Contract. (See chapter 19.02 RCW for State licensing requirements/definitions.) Contractor shall notify DOL immediately and in writing of business closure or change in legal status of business.

30. ORDER OF PRECEDENCE

All rights and obligations of the parties to this Contract shall be subject to and governed by the items listed in this section, which are incorporated herein. In the event of an inconsistency in this Contract, unless otherwise provided in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and Washington State laws, and regulations;
2. *License Agreement*;
3. Attachment A, *Data Security Requirements*;
4. Attachment B, *File Layout*;
5. Contractor's *Vehicle/Vessel Contract Application* incorporated by reference; and
6. Any other provisions of this Contract incorporated by reference or otherwise.

31. ALTERATIONS AND AMENDMENTS

This Contract may only be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

32. ASSIGNABILITY

The Contractor shall not assign this Contract, nor any claim arising under this Contract without the prior written consent of DOL, which consent shall not be unreasonably withheld.

33. CONFIDENTIALITY

The use or disclosure by any party of any information concerning DOL for any purpose not directly connected with the administration of DOL's or the Contractor's responsibilities with respect to services provided under this Contract is prohibited except by prior written consent of DOL. The Contractor shall maintain as confidential all information concerning the Contractor's study findings and recommendations, as well as the business of DOL, its financial affairs, relations with its clientele and its employees, and any other information which may be specifically classified as confidential by DOL in writing to the Contractor. To the extent consistent with Washington State law, DOL shall maintain all information which the Contractor specifies in writing as confidential. The Contractor shall have an appropriate contract with its employees to this effect.

34. COMPLIANCE WITH APPLICABLE LAW

At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.

35. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY

Contractor certifies, that neither it nor its “principals”, as defined in RCW 39.26.010 (9) or other state statute, regulation or policy, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state agency.

36. GOVERNANCE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

37. INDEPENDENT CAPACITY

The parties intend an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of DOL. The Contractor will not hold itself out as, nor claim to be, an officer or employee of DOL or of the state of Washington by reason of this Contract, nor will the Contractor make any claim or right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

38. INDEMNIFICATION

The Contractor shall defend, indemnify, protect and hold harmless DOL, or any of DOL's agents, and employees of the state, from and against all claims, suits or actions arising from any form of Data Security Breach as described in this Contract, or any negligent or intentional acts or omissions of the Contractor, or agents of the Contractor, while performing the terms of this Contract. Contractor is responsible for safekeeping of DOL Data and will defend, indemnify and hold harmless DOL from and against all claims, suits or actions arising from any Breach or unauthorized use of DOL Data which is provided under this Contract. Each party to this Contract shall be responsible for its own acts and/or omissions and those of its officers, employees and agents.

39. LEGAL FEES

Unless otherwise specified by law, and except as otherwise stated herein, in the event of litigation or other action brought to enforce Contract terms, each party shall bear its own legal fees and costs.

40. LIMITATION OF SIGNATURE AUTHORITY

Only DOL's Director or designated delegate by writing shall have the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by DOL's Director or delegate.

41. NONDISCRIMINATION AND CIVIL RIGHTS

During the performance of this Contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy this Contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with DOL.

42. RECORDS MAINTENANCE

The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved including any appeals and remands.

Records and other documents, in any medium, furnished by one party to this Contract to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

43. RIGHTS OF INSPECTION

The Contractor shall, at no cost to DOL, provide DOL with reasonable access to Contractor's place of business and Contractor's records, wherever located. This right of inspection shall extend to any authorized agent or official of the State of Washington. These inspection rights are intended to allow DOL to monitor, audit (per RCWs 46.12.630 and 46.12.640), and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.

44. SEVERABILITY

If any term or condition of this Contract is held invalid, the remainder of the Contract remains valid and in full force and effect.

45. SURVIVORSHIP

All transactions executed pursuant to the authority of this Contract shall be bound by all of the terms and conditions set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. Such terms and conditions include, but are not limited to, those related to indemnification and hold harmless, confidentiality, Permissible Use, and Data Security Requirements.

46. WAIVER

A failure by either party to exercise its rights under this Contract shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Contract unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Contract.

47. CONTRACTOR INFORMATION

- a. Upon execution of this Contract, and as requested by DOL, Contractor must provide a list of legal names for all the Contractor's subsidiaries, branches, sister companies, affiliates and other "doing business as" names who obtain Personal Information.

48. AUTHORIZED ACCESS TO DATA

Contractor will maintain a record of those in its company who have authorized access to Data, and ensure all authorized users maintain confidentiality and Permissible Use of Data.

SAMPLE

ATTACHMENT A DATA SECURITY REQUIREMENTS

Contractor ensures that all Data Security Requirements listed herein are followed and adhered to:

1. Network Security

Contractor agrees to maintain network security that conforms to generally recognized industry standards and best practices (See *Industry Standards* of these *Data Security Requirements*) and apply these standards to their own network. At a minimum, Contractor's network security must include the following:

- a) Network firewall provisioning
- b) Intrusion detection
- c) Quarterly vulnerability assessments
- d) Annual penetration tests (when Data is Personal Information)

2. Application Security

Contractor agrees at all times to maintain and support its software and subsequent upgrades, updates, patches, and bug fixes such that the software is, and remains secure from known vulnerabilities as declared by security notifications and alerts from vendors and security organizations, such as, US-CERT, SANS, and Microsoft TechNet.

Contractor further agrees to secure web applications as described in:

- a) The Open Web Application Security Project's (OWASP) "Top Ten Project"—
<http://www.owasp.org>;

3. Data Security

Contractor agrees to preserve the confidentiality, integrity and accessibility of DOL Data with administrative, technical and physical measures that conform to generally recognized industry standards (see *Industry Standards*, of these *Data Security Requirements*) and best practices that Contractor then applies to its own processing environment.

4. Data Storage

Contractor agrees that any and all DOL Data will be stored, processed, and maintained solely on designated target servers and that no Personal Information at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium.

5. Data Transmission

Contractor agrees that any and all electronic transmission or exchange of system and application Data with DOL and/or any other parties expressly designated by DOL shall take place via secure means (using HTTPS or SFTP or equivalent) and solely in accordance with these *Data Security Requirements*.

6. Data Encryption

Contractor agrees that any and all DOL Data, in transit or at rest, defined as Personal Information, be encrypted using only NIST or ISO approved encryption algorithms.

Encryption keys shall have strength of at least 112 equivalent bit strength:

- a) Symmetric encryption, minimum 128-bit key
- b) Asymmetric encryption, minimum 2048-bit key

7. Destruction of Data

Contractor agrees that upon termination of this Contract it shall delete or destroy all copies of such Personal Information in whatever form and in whatever format stored that has not been combined with other data. For Personal Information combined with other data, and therefore not destroyed, Contractor will continue to abide by the Permissible Use and Data Security Requirement provisions of this Contract.

For non-Personal Information and Data not combined with other data, Contractor agrees that upon termination of this Contract it shall erase, destroy, and render unrecoverable all DOL Data and certify that these actions have been completed within thirty (30) days of the termination of this Contract.

Certification of the destruction of Data will be made in the form of a letter to DOL on Contractor's letterhead and signed by an executive of the Contractor authorized to make such certifications. At a minimum, media sanitization is to be performed according to the standards enumerated by the National Institute of Standards, Guidelines for Media Sanitization, SP 800-88, Appendix A, <http://csrc.nist.gov/>.

8. Security Breach Notification

Contractor agrees to comply with RCW 19.255.010, RCW 42.56.590 and all other applicable laws that require the notification of individuals in the event of unauthorized release of DOL Data or other event requiring notification.

In the event of a Breach of any of Contractor's security obligations whether by Contractor, Subcontractor or Subscriber, or other event requiring notification under RCW 19.255.010 and all other applicable laws, Contractor agrees to the following:

- a) Within seventy-two (72) hours of discovery:
 - Notify DOL Help Desk by telephone and e-mail of such an event:
 - phone: (360) 902-0111; email: hlbhelp@dol.wa.gov
 - Notify DOL's Contract Manager at the contact information listed on the cover of this Contract.
- b) Contractor and DOL will work cooperatively and collaboratively to determine actions required when there are Data Security Breaches. Such actions may include but not be limited to: press releases, and notification to vehicle owners. DOL must approve all notifications prior to release. DOL will be responsible for the coordination of any Data Security Breach notifications and will work collaboratively with the Contractors to ensure that efforts are coordinated.
- c) Indemnify, hold harmless and defend DOL and its trustees, officers, and employees

from and against any claims, damages, or other harm related to such notification event.

- d) DOL may require Contractor to, within thirty (30) days of the execution of the Contract amendment, provide to DOL either:
- an attestation that it already meets the revised Data Security Requirements; or
 - an action plan outlining the steps, including timeframes, the Contractor will take to become compliant for DOL's approval. Contractor will provide DOL a monthly status update on its progress towards becoming compliant.
- e) Should it be determined Contractor has experienced a Data Security Breach, regardless of any insurance policy the Contractor may have, or any limitation of liability stated herein, Contractor will be responsible for the expenses related to a Data Security Breach of Personal Information. Such DOL expenses may include, but are not limited to:
- Printing and postage costs associated with notification;
 - Notice fulfillment services;
 - Credit monitoring; and
 - Breach response, investigative and forensic expenses.
- f) Mitigate the risk of loss and comply with any notification or other requirements imposed by RCW 19.255.010, and all other applicable laws or DOL.

9. Access to Data

Access to the Data will be restricted to authorized users by requiring a logon using a unique user ID and complex password or other authentication mechanisms which provides equal or greater security, such as biometrics or smart cards. Further, passwords must be changed on a periodic basis. Password complexity and changing of passwords shall conform to generally recognized industry standards (see *Industry Standards*, of these *Data Security Requirements*) and best practices.

10. Industry Standards

As a minimum standard, Contractor agrees to ensure information security in accordance with the current standards set forth in ISO/IEC 27000-series with an emphasis in ISO/IEC 27002 — <http://www.27000.org/index.htm>.

ATTACHMENT B FILE LAYOUT

Department of Licensing shall provide to the Contractor vehicle and/or vessel Record Data contained in DOL database using the mutually agreed upon file layout below. DOL reserves the right to edit and/or change the *File Layout* as considered necessary to the functions of DOL, with notice to the Contractor.

- Method of Access/Transfer: Once an established Secure Data Transfer connection with the host computer at Contractor location is confirmed, DOL will provide Data listed in *File Layout* list below, to Contractor.
- Delivery Method: (insert delivery method)
- Frequency of Data Delivery: (insert frequency)

1. DESCRIPTION OF COLUMNS

- Field Description – describes the type of Data in that field.
- Data Base Name – identifies the name DOL field Data is stored in.
- Type – identifies if the Data is numeric (9), or alphabetic (x).
- Size Bytes – identifies the maximum number of characters for Data in that field.
- Position – identifies what location (position) the Data begins at in the file.

