

**IVIPS USE AND DISCLOSURE CONTRACT
ATTACHMENT A
GENERAL TERMS AND CONDITIONS**

In consideration of the IVIPS Uses and Disclosure Contract these General Terms and Conditions contained herein are incorporated by reference, and the parties agree as follows:

1. DEFINITIONS

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

- 1) **Access** - means the way Vehicle/Vessel record information is requested or retrieved by authorized Users and may include the use of IVIPS, email, fax, phone requests.
- 2) **Acknowledgment** - means the Contractor has read this Contract in its entirety and is agreeing to comply with all contractual requirements, obligations and responsibilities contained in this Contract and all incorporated documents either attached or available online.
- 3) **Contract Contact**- means the representative identified in the text of this Contract who is delegated as the person(s) with the authority to administer this Contract.
- 4) **Carry-forward**- means that an Account number previously issued to Contractor will continue to be associated with the current and/or any subsequent Contracts and shall be used for audit findings.
- 5) **Cause**- means the failure of the Contractor and/or authorized User(s) to perform an act, contractual requirement or obligation, and includes but is not limited to the failure to provide documents or other requested items and includes the violation of any state or federal laws, rules and statutes associated with this Contract.
- 6) **Commercial Purpose**- means making any unsolicited business contact with a person named in the disclosed information, including contact intended to result in, or promote, the sale of any goods or services to a person named in the disclosed information.
- 7) **Confidential Information**- means information requiring protection that is more sensitive than "public" and may be exempt from disclosure to the public or other unauthorized persons under either RCW 42.56 or other state or federal statutes. Confidential Information includes, but is not limited to, vehicle owner, social security numbers, credit card information, driver license numbers, Personal Information, law enforcement records, agency security data, and banking profiles. (Note: the 5 digit zip is not considered confidential)
- 8) **Contract** - means disclosure agreement and includes: Uses and Disclosure Contract and all attachments and documents incorporated by reference.
- 9) **Contractor**- means the agency, firm, provider, releasing entity, organization, individual or other entity performing services or obtaining Data under this Contract. Contractor is considered an authorized User.
- 10) **Data**- means information contained in the vehicle and/or vessel records provided to authorized Users under this Contract.
- 11) **DBA and FKA** - means "**doing business as**" (**DBA**) and includes all current business, branches, subsidiaries, sister companies or previous business names Contractor was "**formally known as**" (**FKA**) and the individual locations for all DBAs and FKAs the Contractor operates, does business under or is listed on as a member of.
- 12) **Default**- means the failure of the Contractor and/or authorized User(s) to perform an act, contractual requirement or obligation, and includes but is not limited to the failure to provide documents or other requested items, failed audits, and includes the violation of any state or federal laws, rules and statutes associated with this Contract.
- 13) **Delivery of any notices**- includes USPS, fax, email, certified mail, or registered mail.
- 14) **Inquiry** – means any access to IVIPS that returns: a record, no file, or no record found.
- 15) **IRL**- means *Attachment C*, Information Request Log(s), to be maintained individually by each User and provided to DOL upon request
- 16) **IVIPS**- means the Internet Vehicle/Vessel Information Processing System that is used to obtain information under this Uses and Disclosure Contract.

- 17) **Legal Owner** - includes name, address, city, state, and five (5) digit zip code of the party listed as either lien holder or Registered Owner of a vehicle or vessel.
- 18) **Main or Primary Account Number** - means account number assigned to the Contract Contact.
- 19) **Personal Information**- means information identifiable to any individual including, but not limited to, information that relates to a person's name, finances, education, business, use or receipt of government services or other activities, addresses, telephone numbers, social security numbers, driver licenses number, other identifying number or personal health information, any financial identifiers, and other information that may be exempt from disclosure to the public or other unauthorized persons under either RCW 42.56 or other state and federal statutes.
- 20) **Private Investigator**- means a person who is licensed under RCW 18.165 and may or may not be employed as or by a private investigator agency for the purpose of investigation, escort or bodyguard services, or property loss prevention activities.
- 21) **RCW**- means the Revised Code of Washington.
- 22) **Redacted** - means to block out information so it cannot be read.
- 23) **Registered Owner** - includes name, address, city, state, and five (5) digit zip code of the party listed as owner of the vehicle or vessel.
- 24) **Salting** - means the act of introducing Data containing unique but false information that can be used later to identify any inappropriate disclosure of Data.
- 25) **Sub-account** - means an account number assigned to an authorized User under the main account number for this Contract. Each User is assigned a unique sub-account number for use in accessing the IVIPS.
- 26) **Subscriber Agreement** - means the document between the Contractor and Subscriber that the Contractor shall provide to DOL which sets forth the terms, conditions, and use and required security of Data by the Subscriber. The agreement must include: Subscriber's name, date of Agreement, and Subscriber's use of Data.
- 27) **Subscriber** - means the agency, firm, provider, releasing entity, organization, individual, customer, 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 the purchasing of a service or product from Contractor. A Subscriber must be entitled to the Data with a permissible use under the state and federal disclosure and privacy laws.
- 28) **Subscriber Roster** - means a Microsoft Word or Excel document that the Contractor shall provide to DOL with current, accurate, and verifiable information for each Subscriber and must include: legal name, address, a contact name with email and telephone number, and the Subscribers permissible use for providing them Data from DOL. Contractor shall maintain copies of the Subscriber Roster for the term of the Contract and for six (6) years from termination of this Contract. All Subscribers must be identified on the Subscriber Roster, even if Data is only provided to them once.
- 29) **Unsolicited Business Contact** - means contact intended to result in, or promote, the sale of any goods or services to a person named in the disclosed information.
- 30) **User** - means the Contractor and employees authorized to access IVIPS.
- 31) **Vehicle Record** – means information including but not limited to records regarding: manufactured homes, mobile homes, motorcycles, trailers, recreational vehicles, and snowmobiles.
- 32) **Vessel Record** - means information including but not limited to records regarding about a vessel, boat, or other watercraft.
- 33) **Violate or in violation of** - means, and is not limited to, break, infringe, transgress, omit, or falsify a law, rule, contract, promise, instruction, information, document, etc.
- 34) **WAC**- means the Washington Administrative Code.
- 35) **Working day** means Monday through Friday, excluding state holidays, during business hours of 8am to 5pm, Pacific Standard Time.

2. **TERMS AND CONDITIONS**

All rights and obligations of the parties to this Contract shall be subject to and governed by: the IVIPS Use and Disclosure Contract, *General Terms and Conditions*, *User Access/Change Request*, *Information Request Log*, and *Sample Notification Letter*, *Data Security Requirements*, *Destruction of Data*, *Subscriber Roster* available online at <https://fortress.wa.gov/dol/ivipsprod/ContractForms.aspx> and incorporated herein by reference, and shall also include the Contractor's signed *Vehicle/Vessel Contract Application*, which are incorporated by reference herein.

3. **PERIOD OF PERFORMANCE**

- a. Subject to other provisions the Period of Performance for this Contract shall commence on the **date of execution by both parties**, and shall not exceed the Contract end date as cited on page one (1), unless terminated, whichever occurs first.
- b. This Contract may be extended at DOL's discretion.
- c. Upon expiration of this Contract, IVIPS access will be unavailable.
- d. DOL is not obligated to extend or issue a Contract.
- e. To request an extension or Contract, Contractor must submit a new application (available at the DOL website at <http://www.dol.wa.gov/forms/224002.pdf>) with current business license (if applicable) and all applicable required documentation no later than thirty (30) days before the expiration.
- f. This Contract may be void upon formal action of the State Legislature enacting statutory prohibition or failure to provide funding for the performance of duties provided herein.

4. **ASSURANCES**

The Contractor agrees all activity pursuant to this Contract will be in accordance with all applicable current or future federal, state and local laws, rules, and regulations.

5. **CONTRACT ALTERATIONS AND AMENDMENTS**

DOL may amend this Contract. Amendments must be in writing and signed by personnel authorized to bind each party. DOL reserves the right not to consider changes proposed by the Contractor.

6. **GOVERNANCE**

This Contract shall be construed and interpreted in accordance with the laws of Washington State and the venue of any action brought under this Contract shall be in the Superior Court of Thurston County.

7. **ORDER OF PRECEDENCE**

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:

- a. Applicable Federal and Washington State Statutes and Regulations;
- b. IVIPS Uses and Disclosure Contract;
- c. *Attachment A*, General Terms & Conditions; *Attachment E*, Data Security Requirements;
- d. Signed Vehicle/Vessel Disclosure Agreement Application;
- e. *Attachment B*, User Access/Change Request; *Attachment C*, Information Request Log;
- f. *Attachment D*, Sample Notification Letter; *Attachment F*, Destruction of Data;
- g. *Attachment G*, Subscriber Roster and
- h. Any other provisions of this Contract incorporated by reference.

8. **SEVERABILITY**

If any term or condition in this Contract is held invalid, this shall not affect other terms and conditions of this Contract.

9. **INDEPENDENT CAPACITY OF THE CONTRACTOR**

The employees or agents of each party under this Contract shall continue to be the employee or agent of that party and shall not be considered for any purpose to be employees or agents of the other party.

10. **ASSIGNABILITY**

The ability of the Contractor to access IVIPS pursuant to this Contract shall not be assigned or delegated in whole or in part.

11. **SUBCONTRACTS**

The Contractor shall not enter into subcontracts for access to IVIPS under this Contract. This clause does not include contracts of employment between the Contractor and personnel assigned to work under the Contract on *Attachment B*, User Access/Change Request.

12. **SUBSCRIBERS**

The Contractor shall disclose to DOL if records will be provided to a Subscriber (see definition of Subscriber) of the Contractor. Contractor must have written Subscriber Agreements signed with its entire Subscriber clientele. Contractor is responsible for ensuring that all terms, conditions, securities, assurances applicable Federal and Washington State Statutes and Regulations, and certifications and requirements set forth in this Contract are carried forward to all Subscribers. DOL reserves the right to contact Subscribers and verify information provided by Contractor to include the Subscriber's use of records provided by the Contractor.

13. **INDEMNIFICATION AND HOLD HARMLESS**

- a. **Non-Government entity**, the Contractor will indemnify and hold harmless the State of Washington, Department of Licensing, from contingent liability to others for damages because of bodily injury, including death, misuse of

records provided, willful misconduct, or any violations of the law or expenses incurred, that may result from the Contractor's and its Subscribers and Users, negligent performance under this Contract and any other liability for damages for which the Contractor is required to indemnify the State of Washington, Department of Licensing under any provision of this Contract. Each party shall be responsible for their own legal costs.

- b. **Government entity**, each party to this Contract shall be responsible for its own acts and/or omissions and those of its officers, employees, and agents. No party to this Contract shall be responsible for the acts and omission of entities or individuals not a party to this Contract.

14. **LIMITATION OF STATES LIABILITY**

In no event shall the state of Washington, the Department, the Director of the Department, or any Department employees, be liable to Contractor for any claim, damages, costs, lost production, or any other loss of any kind for any reason.

The state of Washington, the Department, the Director of the Department, or any Department employee shall in no event be liable for any claim of any kind against Contractor or its Subscribers by any party for any reason.

15. **RECORDS, DOCUMENTS, AND REPORTS**

The Contractor shall maintain for six (6) years: books, records, including but not limited to Logs, Rosters, notification letters and other documents, evidence of accounting, and data security procedures and practices. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by DOL, the Office of the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Contractor shall be responsible for any costs associated with an audit, audit exceptions, or disallowed costs incurred by the Contractor.

Government entities shall adhere to their designated records retention schedule.

16. **CONFIDENTIALITY**

Contractor, Users, and Subscribers shall maintain confidentiality of Data and Confidential Information and comply with *Attachment E*, Data Security Requirements.

17. **RIGHTS OF INSPECTION**

DOL reserves the right to inspect Contractor's actual place of business, to conduct a review of how it conducts business and to monitor, investigate, or audit. The Contractor shall provide the right of access to, and shall make available all information necessary to DOL, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor, perform audits, evaluate compliance, investigate or otherwise analyze the use of vehicle/vessel information and/or quality assurance of internal policies and procedures, and/or records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this Contract and may include, but is not limited to, "*Salting*" by DOL. The Contractor shall make available information necessary for DOL to comply with an accounting of disclosures of an individual's Personal Information.

18. **DISPUTES**

The parties agree that time is of the essence in resolving disputes. During the dispute resolution period the parties agree that:

Dispute Steps

- 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 IVIPS Account number; and
- Be mailed, within three (3) working days after the parties agree that they cannot resolve the dispute, to the Contract Contact and DOL:

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

- b. The responding party shall have five (5) working days to respond in writing to the requesting party's statement. This response shall be sent to both the Contracts Office and the requesting party.
- c. The Contracts Office shall review the written statements of the parties and reply in writing to both parties within ten (10) working days. The 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) working days from the date the Contractor signed the Certified Mail Return Receipt, 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) working days. DOL and the Contractor shall jointly appoint a third member to the dispute panel within the next five (5) working 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 one hundred eighty (180) working days with the majority prevailing. The parties agree that the decision of the dispute panel shall be final and binding.

19. TERMINATION FOR DEFAULT

- a. If the Contractor violates any term, condition, or requirement of this Contract or fails to provide required information or documents, DOL may give the Contractor written notice of the violation.
- b. The Contractor will correct the violation within fifteen (15) days or as otherwise mutually agreed. If the violation is not corrected, DOL may, at its sole discretion, immediately terminate this Contract by written notice to the Contractor for a period of time to be determined by DOL. Upon termination, the Contractor shall be liable for damages as authorized by law.
- c. If a Contractor is found to be in violation of applicable RCWs, WACs, laws and statutes cited in this Contract, DOL may immediately terminate this Contract. In accordance with RCW 42.56 and 46.12.640, each violation may result in a gross misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000), or by imprisonment in a county jail not to exceed one (1) year, or both for each violation.
- d. The Department shall suspend or revoke for up to five (5) years the privilege of contracting to obtaining Data if Contractor is found to have committed a disclosure violation as defined in RCW 46.12.640.
- e. 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 (3rd) day following the date of its posting in the United States mail.

20. TERMINATION FOR CONVENIENCE

This Contract may be terminated by either party with or without cause, upon five (5) working days written notice to the other party. Written notice may include, but is not limited to, notice provided by United States Postal Service (USPS), email, or fax. If this Contract is so terminated, DOL is entitled to payments required under terms of this Contract for inquiries made prior to termination. Notice of termination shall be conclusively deemed to have been delivered to, and received by Contractor, as of midnight of the third (3rd) day following the date of its posting in the United States mail.

The Department reserves the right to suspend or terminate access to IVIPS at anytime for any reason without notice to Contractor. DOL shall have no liability whatsoever to Contractor in connection with access withdrawal.

21. LEGAL FEES

In the event of litigation or other action brought to enforce Contract terms, each party is responsible for its own legal fees and costs.

22. WAIVER

Unless this Contract is amended in writing by an authorized representative of DOL, waiver of a default under this Contract, or failure by DOL to exercise its rights shall not be considered a modification or amendment to this Contract; or constitute a waiver of any subsequent default.

23. PUBLICITY

The Contractor agrees not to use DOL's logo, state seal, name to publish, email, distribute in any manner or use in any way in advertising, sales promotions, publicity, or solicitations.

24. CONTRACTOR'S PROPRIETARY INFORMATION

The Contractor acknowledges DOL is subject to chapter RCW 42.56, the Public Records Act, and this Contract shall be a public record. 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 RCW 42.56, 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. If the Contractor fails to obtain the court order enjoining disclosure, DOL will release the requested information.