

ELECTRONIC DATA TRANSFER AGREEMENT

THIS AGREEMENT made on the 19th day of May, 1995.

B E T W E E N:

Her Majesty the Queen in right of the Province of Ontario as represented by the Ministry of Transportation,

(hereinafter referred to as "Ministry")

- and -

Corporation of the Town of Pelham, Building & Enforcement Services, a municipality in the Province of Ontario,

(hereinafter referred to as "**The Requester**")

WHEREAS the Ministry maintains computer databases containing information pertaining to Vehicle Records, (hereinafter referred to as "Information Products");

AND WHEREAS the Ministry has installed computer hardware and software to allow remote access to Information Products; (hereinafter referred to as the "Value Added Network");

NOW THEREFORE the Ministry and **The Requester**, in consideration of the promised and mutual covenants hereinafter contained, do hereby agree as follows:

1.0 Grant of Licence

except for that which has been approved by the Ministry, as follows:

1.1 Grant

In consideration of payment of the requisite fee, **The Requester** is granted a non-exclusive, non-assignable and non-transferable licence to access and use the Information Products, subject to the terms of this Agreement.

Vehicle information including resident address to be used for the purpose of parking tag verification.

- b) The Requester warrants that it has statutory authority for requesting the Information Products.

1.2 Title

The Requester agrees and acknowledges that the Ministry owns all right, title and interest in the Information Products including copyright, intellectual property and other proprietary rights. This licence is not a sale of any or all of the Ministry's right, title or interest of any kind whatsoever.

1.4 Data Matching and Data Profiling

The Requester shall not develop or derive for any purpose whatsoever any other product in machine-readable form or otherwise, that incorporates, modifies, or uses in any manner whatsoever, any "Personal Information" contained in the Information Products. "Personal Information", for the purposes hereof shall have the meaning as defined in subsection 2(1) of the Freedom of Information and Protection of Privacy Act (R.S.O. 1990 c.F.31). In addition, **The Requester** shall not place any data which was not obtained hereunder into a database containing Personal Information obtained pursuant hereto, other than as authorized.

1.3 a) Authorized Use

The Requester warrants that the Information Products and the information contained therein shall be held in strict confidence for the exclusive use of **The Requester** and that **The Requester** shall not use the Ministry's Information Products for any purpose

1.5 **Individuals not to be Contacted**

The Requester will not contact any individual to whom the Information Products relates, directly or indirectly, other than as authorized.

1.6 **Document Destruction**

The Requester shall destroy the Information Products and any copies or portions thereof in its possession within the later of thirty (30) days following completion or fulfilment of the authorized use as set out in Article 1.3 hereof or a retention period prescribed by law pertaining to the Requester.

1.7 **Survival**

The Requester further warrants that such forbearance from use of Information Products shall be binding upon its successors and assigns. This Article shall survive the expiry or termination of this Agreement.

2.0 **Term**

2.1 **Term and Renewal**

The term of this Agreement shall be for an Initial Term of 12 months, from the 19th day of May, 1995 to the 18th day of May, 1996, and, thereafter, shall automatically be renewed for an additional term of 12 months following the Initial Term upon the same terms and conditions as set out herein, unless either party provides written notice not less than thirty (30) days prior to the expiration of the Initial Term or subsequent 12 month term, of its intention to terminate the Agreement.

2.2 **Early Termination**

This Agreement may be terminated by either party giving to the other party thirty (30) days written notice of termination.

2.3 **Conflict with Privacy Laws**

This Agreement is subject to any restrictions, limitations or provisions enacted by the Ministry or the Province of Ontario which may affect any of the provisions or terms set forth herein, including the right to limit the information included in the Information

Products, in any manner. In addition, the Ministry shall have the right to cancel this Agreement forthwith in the event of specific conflict with the provision of any legislation or regulation affecting freedom of information, or protection of privacy.

3.0 **Electronic Data Transfer**

3.1 **Electronic Call-Ups**

The Ministry will allow The Requester to electronically access the Ministry's vehicle databases through a telecommunications link to be established between The Requester's computer and the Value Added Network ("EDT").

3.2 **Effect of Electronic Call-Up**

The Ministry will accept the electronic requests for Information Products ("call-up") and will respond with Information Products according to the schedule in Attachment A, which is incorporated in and made a part of, this Agreement. The parties agree that any electronic call-up made under this Agreement shall be equivalent in effect, in contract and at law, to request otherwise made on paper medium or otherwise, and transmitted, all in accordance with this Agreement.

3.3 **EDT Network and Mailbox**

The Requester shall obtain, install and test at its own expense all the computer equipment, supporting equipment software and services, including communications and mailbox services ("Mailbox"); that it will require in order to send and to receive electronic documents as contemplated by this Agreement through the Value Added Network.

3.4 **R e c e i p t a n d Acknowledgement**

The Ministry is hereby deemed to have received the electronic call-up when it is accessible to the Ministry at its Mailbox. No document shall be of any legal effect until it is received. The Requester is hereby entitled to an acknowledgement of receipt from the Ministry and reasonable efforts to assist when failed communication is detected.

3.5 **Contract Terms and Conditions**

A contract shall be formed between the parties as a result of receipt via the Value Added Network of the call-up and such contract shall contain the information set out in the call-up and shall incorporate and be subject to the terms and conditions of this Agreement.

3.6 **Data Processing**

The Requester agrees to maintain control of the requests for and receipt of the Information Products from their office in Canada. From this Canadian office, The Requester also agrees to maintain control over all activities related to the authorized use set out in section 1.3 hereof, at all times during the term of this agreement.

3.7 **EDT Support**

Each of the parties hereto shall:

- designate an administrator who will be responsible for all issues and communications with the other related to EDT;
- designate a technical advisor who will be the primary contact for technical communications with the other related to EDT;
- inform the other of the names of their administrator and technical advisor before any call-up of Information Products; and
- promptly inform the other when another individual is assigned to either of these positions.

Additional support personnel may be designated by mutual agreement.

4.0 **Payment and Fees**

4.1 **Value Added Network**

The Requester will pay all costs associated with use of the Value Added Network for electronic access to Information Products; such costs will include a set up fee of \$250.00 for a PC connection or \$1100.00 for a mainframe connection, all one time,

recurring, and usage charges for all hardware, software, and services required to connect to and use the Value Added Network.

4.2 **Changes to Fees or Information Products**

The Ministry may modify the schedules in Attachment A, or the fee in Section 4.1, of this Agreement at any time when it is reasonable and necessary to do so, as determined by the Ministry, including the right to implement a fee schedule for Information Products. The Ministry will attempt to give The Requester thirty (30) days notice prior to changing the schedules in Attachment A, the fee set out in Section 4.1 of this Agreement, or the implementation of a fee schedule for Information Products, but the Ministry is not required to do so. The Requester may continue with this Agreement as modified or it may terminate the Agreement, subject to payment of all fees incurred prior to termination.

5.0 **Security, Records and Audit**

5.1 **Transaction Log**

"Transaction Log" means the record of all electronic call-ups and other communications exchanged between the parties via the Value Added Network and a summary of the contents thereof, including all material particulars of the contracts formed between the parties.

Each party shall maintain a Transaction Log and shall designate one or more individuals with appropriate authority as the persons responsible for the systems and procedures relating to the compilation and custody of the Transaction Log. Any such authorized person shall be competent to certify the accuracy and completeness of the Transaction Log.

At the end of each calendar quarter, or more frequently as a party may wish, each party shall prepare a permanent or unalterable copy of its Transaction Log for the immediately preceding period. The permanent or unalterable copy for that period shall be certified by one of the persons authorized pursuant to this provision, and prepared in duplicate on "write once" form of electronic or optical media. If not more than 50 Information Products have passed between the parties during that period,

a party may, at its option, prepare the permanent or unalterable record of the Transaction Log for that period in written form.

5.2 Each Requester selling information to another Requester shall maintain a monthly record of the request, including date, information requested, and identity of the end use, for five (5) years from the date of the request. The format shall show the date of request, type of information requested, the authorized use and the identity of the user, in that order.

5.3 Each Requester who is the end user of information and receiving residence address information shall maintain, for five (5) years from the date of the request, a monthly record of the inquiry which includes the requester code, date of request, information needed, and the business reason for the inquiry. The format shall show the date of request, the requester code, information requested, and the purpose of the request, in that order.

5.4 Objection Procedure

The parties hereby agree to utilize the following escalation procedures to resolve any issues, disputes or claims which may arise prior to resorting to any arbitration or legal remedies. In the event of a dispute arising out of or in connection with this Agreement, the parties' service coordinators will initially attempt to settle the dispute. If they are unable to do so within two (2) weeks, they shall refer the dispute to their respective senior management who will have a further two (2) weeks to negotiate a resolution. Failing such resolution, the matter will be referred to a single mediator mutually agreeable to both the parties. Any decision of such mediator will be a recommendation for resolution of the dispute but will not be binding on a party without its consent.

5.5 Security

a) **The Requester** shall maintain the security and integrity of the information and Information Products which it receives, and shall comply with such security requirements as are from time-to-time specified by the Ministry, which includes keeping the information in a

physically secure location to which access is restricted.

b) **The Requester** is responsible for the selection, implementation, and maintenance of appropriate security products, tools, and procedures sufficient to meet Ministry requirements for protecting Ministry programs and data from improper access, loss, alteration, or destruction. **The Requester** is responsible for implementing tests, as may be necessary, to establish and monitor its own security products, tools, and procedures and to assess their adequacy.

c) **The Requester** shall ensure that each employee, representative, or agent has a user identification number (called a "USERID") and a security code to make call-ups and receive Information Products under this Agreement. Call-ups which contain a USERID and a security code will be legally sufficient to verify the identity of **The Requester** and the authenticity of the call-ups. **The Requester** will maintain security procedures to prevent unauthorized use of disclosure of USERID's.

d) Any duplicate of address information shall be placed so that the information cannot be viewed by the public and/or non-authorized persons.

e) Subject to Article 1.3 the Requester shall assure that no Personal Information will be used or described in a form in which the individual to whom it relates can be identified.

f) If the Requester is approved to receive residence addresses the Requester may release residence address information subject to the provisions of the Municipal Freedom of Information Act, (R.S.O. 1990, c. M56), as may be amended from time to time.

5.6 Audit

The Requester shall accommodate electronic or manual audits of **The Requester** at the discretion of the Ministry and on one (1) business day's notice. **The Requester** agrees to allow on-site audits by the Ministry during regular business hours. **The Requester's** information request records shall be subject to inspection and audit by the Ministry for a period of three (3) years.

5.7 Surrender of Information Products

Whenever **The Requester's** account is suspended, cancelled or revoked pursuant to Section 4.5, or voluntarily closed, or cancelled pursuant to Section 2.3, or upon the expiration or other termination of this Agreement, **The Requester** shall, at the request of the Ministry, surrender to the Ministry all Information Products and any copies or portions thereof in its possession and all records retained in respect thereof, except those copies required to fulfil its obligations as set out in the Section 7.10, not later than the end of the third business day after the date of suspension, revocation, closure or cancellation.

5.8 Authorization

Each party shall establish such systems or methods of controlling the transmission of its documents as it considers appropriate, and warrants that each document of which it is the sender is duly authorized and binding upon it.

5.9 Incomplete, Inaccurate or Corrupted Call-Ups

If the Ministry reasonably suspects that a call-up is incomplete, inaccurate, corrupted in transmission, or not intended for it, it shall not process the call-up, pending further clarification by **The Requester**. **The Requester** shall promptly re-transmit such call-up or take such other corrective actions as may reasonably be required in the circumstance. All communications initiated pursuant to this section are at the expense of **The Requester**. It is in the discretion of the party whether to use the electronic network for notices given pursuant to this section.

5.10 Confidentiality

Each party acknowledges that call-ups

and Information Products contain confidential information of the other party. Each party shall notify any personnel who may have access to the confidential information contained in such call-up and shall instruct such personnel not to disclose such information except to the extent reasonably necessary to enable the performance of their duties and to undertake all reasonable steps necessary to preserve the confidentiality of the confidential information of the other party, including the exercise of not less than the same degree of discretion and precaution applicable with respect to the confidential information of the party by which they are engaged.

6.0 Default

6.1 Default

In the event of default of any of the terms and conditions in this Agreement by **The Requester** whether by omission or commission, or if an event of default under Section 6.2 occurs, the Ministry at its discretion, may suspend, cancel or revoke the privileges of **The Requester** hereunder, forthwith upon delivery of notice in writing to that effect. The Ministry may pursue appropriate administrative, Civil and/or Criminal remedies for default of the Agreement provisions.

6.2 Events of Default

Default events include, but are not limited to, the following:

- (a) **The Requester** becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors;
- (b) an order is made or resolution passed for the winding up of **The Requester**, or **The Requester** is dissolved;
- (c) **The Requester** ceases to operate;
- (d) **The Requester** has submitted false or misleading information to the Ministry or makes a false representation in this Agreement;
- (e) there is a material adverse change in risk;

(f) **The Requester** fails to meet a term or condition of this Agreement; or

(g) **The Requester** has distributed restricted or confidential information to any person for a reason not authorized herein.

6.3 **Surrender of Records**

In the event of suspension, cancellation or revocation hereunder **The Requester** shall comply with the provisions of Section 5.4 with respect to surrender of records and Information Products and **The Requester** shall continue to remain bound by the non-disclosure provisions hereof which shall survive termination of this Agreement and shall remain in full force and effect.

7.0 **General**

7.1 **End Users**

End Users are the customers of, and responsibility of, **The Requester**. The Ministry will not interact directly with any End Users. **The Requester** shall not give End Users the name or telephone number of any Ministry employee without the Ministry's prior consent.

7.2 **Help Desk**

The Requester shall maintain a help desk for its End Users. Personnel assigned to the help desk shall be fully trained and shall be prepared to answer all End Users questions concerning the Value Added Network. In cases when **The Requester's** help desk personnel are unable to answer a question and that question must be answered by Ministry personnel, **The Requester** shall obtain the answer from the Ministry and relay the answer to the End User.

7.3 **Independent Contractor**

The Requester and its officers, agents and employees shall act on behalf of **The Requester** and not as officers, agents or employees of the Ministry.

7.4 **Indemnity**

The Requester agrees to defend, indemnify and hold harmless the Ministry and its officers, agents and employees from any and all, actions, damages or losses which may be brought or alleged against the Ministry, its officers, agents or employees by reason of the negligent, improper, or unauthorized use or dissemination by **The Requester** or its officers, agents, or employees, of Information Products furnished to **The Requester** by the Ministry, or by reason of inaccurate or out-of-date information contained in Information Products furnished to **The Requester** by the Ministry. This Article shall survive the expiry or termination of this Agreement.

7.5 **Limitation of Liability**

The Ministry makes no warranty, express or implied, with respect to the Information Products, the accuracy or completeness of information contained therein, or that they will be merchantable or fit for any purpose. In no event will the Ministry be liable for damages, including any loss of profits or other incidental or consequential damages arising out of **The Requester's** use of, or inability to use the Information Products, or delays by the Ministry, or for failure to supply Information Products, or inaccurate or out-of-date information contained therein. This Article shall survive the expiry or termination of this Agreement.

7.6 **Force Majeure**

Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of that party, including but not limited to, acts of God; acts of war; riots; fires; floods or other disasters; strikes; walkouts; communication line or power failures; or failure, inoperability or destruction of computer hardware, software or firmware (unless by reason of the negligence of a party to this Agreement).

7.7 Network Failure

If call-ups or Information Products cannot be sent by EDT because of some failure, both parties agree to attempt to continue normal communications by alternate means and to restore the EDT transmissions promptly. The parties agree to retransmit promptly when a repeat transmission is reasonably requested by the other.

7.8 Advertising

Any promotional or informational material related to access to the Ministry's Information Products shall be accurate and shall be consistent with the terms and provisions of the Agreement and shall contain only factual statements relating to the purpose and conditions of access as set forth in this Agreement. The Ministry name and logo shall not be used without the prior written consent of the Ministry.

7.9 Enforceability

The parties agree that, as between them, each electronic call-up received by the Ministry shall be deemed to constitute a memorandum in writing, signed and delivered by or on behalf of **The Requester** thereof for the purposes of any statute or rule of law that requires a contract to be evidenced by a written memorandum to be signed and/or delivered. Each party acknowledges that in any legal proceedings between them respecting or in any way related to a contract or call-up, it hereby expressly waives any right to raise any defence of waiver of liability based upon the absence of a memorandum in writing or of a signature.

7.10 Evidence

Any computer printout of electronically transmitted data will be considered to be an "original" when maintained in the normal course of business and will be acceptable by both parties to the same extent and under the same conditions as other business records maintained in documentary form. Each party agrees that any Transaction Logs and records, whether kept by either party in a regular course of business or kept by a Value Added Network, shall be admissible in any legal, administrative or other proceedings as prima facie evidence of the accuracy and completeness of their contents in the same manner as an original document in

writing. The parties hereby waive any right to object to the introduction of a duly certified permanent copy of such records in evidence.

7.11 Non-Assignability

This Agreement is not assignable by **The Requester**, either in whole or in part, without prior written consent of the Ministry, which consent may be unreasonably withheld.

7.12 Notification of Breach

The Requester shall notify the Ministry in writing immediately upon becoming aware that any of the provisions set out in this Agreement have been breached.

7.13 Notices

Any notices to be given under the provisions of this Agreement shall be in writing and shall be given by personal delivery, or sent by electronic facsimile, or mailed by prepaid registered mail, or delivered by courier service. Subject to change by either party with written notice, notices shall be addressed as follows:

To the Ministry:

Licensing Administration Office
Ministry of Transportation
2680 Keele Street
Downsview ON M3M 1J8

Attention:

**Co-ordinator,
Business Information Services**

Tel: (416) 235-4832

Fax: (416) 235-4414

**To: Corporation of the Town of
Pelham, Building & Enforcement
Services**

**20 Pelham Town Square,
Box 400
Fonthill, Ontario
L0S 1E0**

Attention:

**Ernie Cronier
Director of Building &
Enforcement Services**

Tel: (905) 892-2607

Fax: (905) 892-5055

Notices shall be deemed to have been effectively given on the date of personal delivery, the date of electronic facsimile

transmission or the date of delivery by courier service, or in the case of service by registered mail five (5) days after the date of mailing.

7.14 Waiver

The failure of either party to complain of any act or failure to act shall not constitute a waiver by either party of its rights under this Agreement. No waiver of any rights under this Agreement shall be effective unless in writing.

7.15 Entire Agreement

This Agreement, and all Schedules attached hereto, constitutes the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior understandings, discussions, negotiations, commitments, representations, warranties and agreements, written or oral, express or implied, between them. In particular, all Information Products furnished to **The Requester** by the Ministry prior to the effective date hereof, shall be governed by the terms of this Agreement. None of the parties shall be bound by any definition, condition, warranty or representation unless expressly stated in this Agreement. Except as expressly provided herein, this Agreement maybe amended or modified only by an instruction in writing executed by each of the parties.

7.16 Jurisdiction of Contract

A contract created pursuant to this Agreement shall be deemed to have been formed in the Province of Ontario and the rights and obligations of the parties to such contract shall be governed by the laws in force in Ontario.

7.17 Interpretation

(a) Headings are not be considered part of this Agreement, and are included solely for convenience and are not intended to be full or accurate descriptions of the content of the paragraphs.

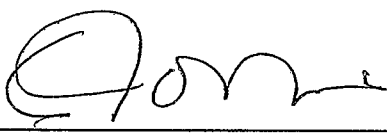
(b) In this Agreement, words importing the singular number include the plural and vice versa, words importing the masculine gender include the feminine and neuter genders; and words importing persons include individuals, sole proprietors, corporations, partnerships, trusts and unincorporated associations.

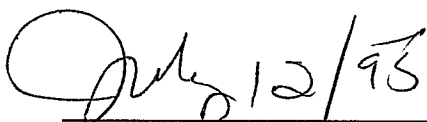
7.18 Default

Each provision of this Agreement which, in order to give effect thereto, is required to survive termination of this Agreement, shall do so and shall continue in full force and effect until released in writing, duly executed by the Ministry.

IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement.

Ministry of Transportation

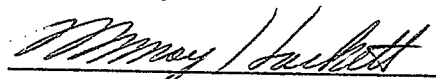

2 Director, Licensing and Control


Date

Corporation of the Town of Pelham, Building & Enforcement Services


Name: Ralph Beamer

JUNE 8, 1995
Date

Title: MAYOR

Name: Murray Hackett
Title: CAO/Clerk

JUNE 8, 1995
Date:

ATTACHMENT "A"

ACCESS SCHEDULE

The Value Added Network may normally be accessed 24 hours per day, 7 days per week.

EDT - Prime Time:

It is expected that 90% of transactions will be processed and transmitted to **The Requester** within 15 seconds of receiving the transaction from **The Requester**.

EDT - Prime Time Batch:

It is expected that 90% of transactions will be processed and transmitted to **The Requester** within 1 hour of receiving the transaction from **The Requester**. A Prime Time Batch transaction means a maximum accumulation of 10 information requests in one transaction received by the Ministry between the hours of 8:00 am and 6:00 pm EST.

EDT - Over Night Batch:

It is expected that the transaction will be processed and transmitted to **The Requester** the following business day.

The Requester's
Technical Contact is

ERNIE CRONIER
Please print or type name

905 - 892 - 2607
Area Code and telephone number