Appendix A
NEW YORK STATE
DEPARTMENT OF MOTOR VEHICLES
STANDARD SECURITY CLAUSES
FOR SHARING DATA WITH AGENCIES OF
THE STATE OF NEW YORK

(Revised 2/14/12)

The terms of this Appendix have been incorporated into an agreement between the New York State Department of Motor Vehicles and the recipient of DMV data. The Parties to the Agreement shall comply with the applicable provisions hereof, to the extent not superseded by federal law.

All data to which the recipient NYS State Agency ("Recipient") will be provided access by DMV is proprietary to DMV. Such data shall hereinafter be referred to as "DMV data". Recipient will safeguard all DMV data and resources to which it is granted access. Such safeguards must provide a level of protection of DMV data which is at least equivalent to those provided under NYS Cyber-Security Policy P03-002-V3.4, and comports with industry standards for such engagements.

1. Recipient agrees to limit its use of DMV data to the purpose for which it is provided hereunder, and for no other purpose, unless expressly authorized to do so by DMV.

2. Recipient must protect DMV data that is in Recipient's possession, or under its control from unauthorized access, disclosure, or dissemination.

3. DMV data includes information that is:
   - provided by DMV which is marked Confidential";
   - defined as "Personal, Private and Sensitive Information" (PPSI);
   - not expressly granted for public disclosure or dissemination;
   - protected by law from disclosure or dissemination;
   - concerning DMV's infrastructure;
   - pertinent to an ongoing investigation.

4. Recipient must not permit DMV data to be copied or shared with anyone outside of the Recipient's organization, unless expressly authorized by DMV; and must limit access to, and use of, DMV data to individuals who require access for the purpose fulfilling Recipient's obligations arising under the terms of this Agreement.

5. Recipient must cooperate with DMV in the review of Recipient's data control processes employed for the protection of DMV data.

6. Recipient agrees to promptly notify DMV if the confidentiality of DMV data is compromised at any time.

7. Recipient acknowledges that it understands and must comply with laws concerning the loss, misappropriation, compromise, or misuse of protected data provided hereunder, including:

   a) the federal Driver's Privacy Protection Act of 1994 (DPPA) (18 U.S.C. §2721, et seq.), and
   b) the New York State Information Security Breach and Notification Act (ISBNA) (General Business Law, §899-aa; State Technology Law, §208).

8. In the event that the security of personal information is breached in violation of the ISBNA, from a system maintained by Recipient, then the Recipient shall be responsible for providing notice of breach to the person(s) to whom such information pertains, in addition to notifying DMV. In the event that Recipient shares such information with another entity, Recipient must obtain prior approval from DMV, and must hold its recipient responsible for providing such notice.

9. Recipient must take appropriate measures to advise pertinent staff members of the penalties associated with unauthorized access, use, or dissemination of protected data.

10. Recipient agrees to promptly notify DMV's Information Security Office of any confirmed or suspected misuse of DMV information or resources, as follows: InformationSecurity@dmv.ny.gov (518) 402-2676.

11. Recipient agrees to comply with DMVs instructions for the secure disposal of agreement-related electronic or hard copy files in Recipient's possession upon expiration of the term of this Agreement.

12. Recipient agrees to continuing cooperation with DMV in response to developing security vulnerabilities.

DMV Photo System
USER AGREEMENT

_____
(hereinafter referred to as The Participating Agency)

_____
Main ORI
(add additional ORI's at end of agreement)

understands and agrees to comply with all rules and policies established by the New York State Department of Motor Vehicles (DMV) and the New York State Division of Criminal Justice Services (DCJS) concerning the use of DMV Photo System as set forth in the DMV Photo System Policies and Procedures Manual (as recited below).

The Participating Agency agrees to:
comply fully with the terms of the Driver's Privacy Protection Act of 1994 ("DPPA") (18 USC §2721 et seq.), the Information Security Breach and Notification Act ("ISBNA") (General Business Law §899-aa and State Technology Law §208), and all other applicable laws and regulations respecting access to and use of motor vehicle records as stated in the DMV Photo System Policies and Procedures Manual and that it will continue to take all necessary action to insure compliance with said laws and regulations.

It is understood by the Participating Agency:
that the unauthorized acquisition of a DMV Photo image may require that notification of the unauthorized acquisition be given to the subject of interest pursuant to the ISBNA.

It is understood by the Participating Agency:
that remote audits of DMV Photo usage will be conducted by DCJS and that Periodic site audits (announced/unannounced) of DMV Photo System usage may be performed by DCJS in conjunction with their triennial audits eJusticeNY usage.

It is understood by the Participating Agency:
that a violation of the rules, policies, practices and procedures set forth in the DMV Photo System Policies and Procedures Manual may result in the immediate or delayed suspension or removal from participation in the DMV Photo System, as deemed appropriate by DMV and DCJS.

DMV PHOTO SYSTEM POLICIES AND PROCEDURES MANUAL

1.0 GENERAL PROVISIONS:

1.01 The DMV Photo System (DMV Photo) allows authorized users to directly access the New York State Department of Motor Vehicles' (DMV) database of digitized photo images to obtain a driver's photo.

1.02 DMV Photo is not an intelligence system and does not allow authorized users to conduct generalized searches of the DMV digital photo database.

1.03 Participating Law Enforcement Agencies (LEA) agree to abide by the terms and conditions governing the use of DMV Photo and that they will comply fully with the terms of the Driver's Privacy Protection Act of 1994 ("DPPA") (18 USC §2721 et seq*.),* the Information Security Breach and Notification Act ("ISBNA") (General Business Law §899-aa and State Technology Law §208) and all other applicable laws and regulations respecting access to and use of motor vehicle records and to continue to take all necessary action to insure compliance with said laws and regulations.

2.0 GENERAL SYSTEM DESCRIPTION

2.01 The purpose of DMV Photo is to ensure that participating LEAs and individual Requestors (defined below at 7.02) are able to expeditiously obtain the DMV photo image of a subject of interest: relevant to an active or potential criminal investigation, a fugitive wanted pursuant to a sworn arrest warrant, a witness to a crime or criminal activity whose whereabouts are unknown, a missing person due to a crime or suspected criminal activity, a driver not in possession of his/her driver license; or a driver who's driver license appears fraudulent.

3.0 ADMINISTRATION

3.01 DMV Photo is jointly maintained by DMV and the NYS Division of Criminal Justice Services (DCJS) pursuant to a Memorandum of Understanding. LEAs are defined as: New York State Police, District Attorneys and investigators employed in District Attorney offices (as defined in NYS Criminal Procedure Law §1.20[32] and §1.20[34][g]), local police departments and sheriff's offices (as defined in NYS Criminal Procedure Law §1.20[34][b] and [d]), New York State agencies that employ investigators assigned to law enforcement units (as defined in NYS Criminal Procedure Law §1.20[34][j][k][m] and [q]), and, federal agencies located within New York State that employ investigators assigned to law enforcement units. Law enforcement agencies not specifically referenced within the above definition of "LEA" can

apply for access, however, all such applications must be approved by DCJS and DMV.

4.0   SYSTEM SUPPORT SERVICES

4.01   All questions concerning access, connectivity or system maintenance shall be submitted to the NYS OITS Help Desk at 1-844-891-1786.

5.0   APPLICATION

5.01   To apply for access to DMV Photo, the agency Executive Officer or Chief must complete and submit the following forms:

5.01.1   "Application for DMV Photo Access"; and,
5.01.2   "DMV Photo User Agreement",

5.02   Electronic versions of these forms, plus the DMV Photo System Policies   and Procedures Manual, are available on *eJusticeNY* within the Law Enforcement Services suite – access "Overview" and click tab for "DMV Photo Resources".

5.03   All forms must be submitted electronically as an attachment through the IJ Portal Feedback (Provisioning) function.

5.04   Agency eligibility to participate in DMV Photo will be based on procedures to be jointly established by the commissioners of DMV and DCJS.

5.05   A written notification of approval to access DMV Photo will be e-mailed back to the agency Executive Officer or Chief within 15 days.

6.0   USER AGREEMENT

6.01   By signing the DMV Photo User Agreement, the agency Executive Officer or Chief agrees that the LEA will abide by the terms and conditions governing the use of DMV Photo and that it will comply fully with the terms of the DPPA, the ISBNA, and all other applicable laws and regulations respecting access to and use of motor vehicle records and that it will continue to take all necessary action to insure compliance with said laws and regulations.

6.02   By signing the DMV Photo User Agreement, the agency Executive Officer or Chief understands that the <u>un</u>authorized acquisition of a DMV Photo image may require that notification of the unauthorized acquisition be given to the subject of interest pursuant to the ISBNA.

6.03   **Users shall not (i) use DMV records or information for civil immigration purposes or (ii) disclose such records or information to any agency that**

primarily enforces immigration law, such as U.S. immigration and customs enforcement and U.S. customs and border protection, or to any employee or agent of any such agency unless such disclosure is pursuant to a cooperative arrangement between city, state and federal agencies which does not enforce immigration law and which disclosure is limited to the specific records or information being sought pursuant to such arrangement. In addition to the requirements of 18 USC 2721(c), the LEA shall keep for a period of five years records of all uses and identifying each person or entity that primarily enforces immigration law that received department records or information from such certifying person or entity. The LEA shall maintain the records in a manner and form prescribed by the commissioner, and the LEA shall make them available for inspection upon the Commissioner's request.

6.04   Participating LEAs agree to execute a new DMV Photo User Agreement when significant changes/upgrades are made to the DMV Photo system and/or are required to by either DCJS or DMV.

7.0   REQUESTOR

7.01   A "Requestor" is an individual law enforcement officer with access rights to eJusticeNY and the DMV Photo suite.

7.02   Requestors are responsible for ensuring that every request is linked to an investigation as defined in 2.01 and that the information submitted with each request is accurate.

7.03   Due to the personal, private nature of the information available through DMV Photo, the LEA is responsible for establishing intra-agency protocols that optimally safeguard all information submitted to, and received from, DMV Photo.

7.04   The Requestor must provide the following information via eJusticeNY in   order to obtain a photo image:

7.04.1   the LEA specific case number (if applicable);
7.04.2   the full name and client ID number of a person whose image is being retrieve);
7.04.3   the reason code; and,
7.04.4   the contents, if any, of the optional comments field.

7.05   By completing the eJusticeNY DMV Photo request screen, the Requestor certifies that the subject of interest has a driver's license, learner's permit   or non-driver identification card issued by DMV, that the subject of interest is linked to an investigation as defined in section 2.01 and acknowledges that access to a DMV Photo image for an impermissible purpose (defined within Section 11, below) may subject the Requestor to administrative discipline and/or criminal prosecution.

8.0   SUBMISSIONS VIA *eJusticeNY*

8.01   Each Requestor must be an authorized user of *eJusticeNY* in order to access the DMV Photo System suite. To register with *eJusticeNY*, the LEA's *eJusticeNY* Terminal Access Coordinator (TAC) must request users through the IJ Portal Feedback (Provisioning) feature.

      8.02   To obtain a DMV photo image using DMV Photo, the Requestor must submit the following information:

            8.02.1   the LEA specific case number (if applicable);

            8.02.2   the full name and client ID number of a person whose image is being retrieve);

            8.02.3   the reason code; and,

            8.02.4   the contents, if any, of the optional comments field.

      8.03   Permissible reasons ("reason code") for requesting a DMV photo image are:

            8.03.1   **Criminal Investigation** – defined as: an active investigation of a crime, or suspected criminal activity, occurring within the LEA's jurisdiction;

            8.03.2   **Warrant Investigation** – defined as: subject of interest is wanted pursuant to a sworn arrest warrant;

            8.03.3   **Witness Investigation** – defined as: subject of interest is a witness to a crime or suspected criminal activity occurring within the LEA's jurisdiction and his/her whereabouts are unknown; or

            8.03.4   **Missing Person Investigation** – defined as: subject of interest is missing due to a crime or suspected criminal activity occurring within the LEA's jurisdiction.

            8.03.5   **Vehicle Stop –** defined as: subject of interest is a driver not in possession of his/her driver license, or a driver whose driver license appears fraudulent.

9.0   PERMISSIBLE USES OF DMV PHOTO IMAGES

      9.01   Photo images obtained from DMV Photo can be used for investigative purposes only, including but not limited to:

            9.01.1   use in a law enforcement photo array when the subject of interest is a suspect in an active/open investigation;

            9.01.2   use in a wanted poster when the subject of the request is wanted pursuant to a sworn arrest warrant;

            9.01.3   use in a missing persons poster; or,

            9.01.4   use in a press release when the subject of the request is wanted pursuant to a sworn arrest warrant or is a missing person.

10.0   IMPERMISSIBLE USES OF DMV PHOTO IMAGES

10.01   Accessing and/or releasing a DMV Photo image for an impermissible purpose may subject the requestor and/or the individual responsible for its unauthorized release to administrative discipline and/or criminal prosecution.

10.02   Photo images **SHALL NOT** be copied or shared with anyone outside of the Recipient's organization, unless expressly authorized by DMV; and must limit access to, and use of, DMV data to individuals who require access for the purpose fulfilling Recipient's obligations arising under the terms of this Agreement.

10.03   Photo images obtained from DMV Photo **SHALL NOT** be saved in a database or stored in any manner for secondary or subsequent use unrelated to the original active investigation.

10.04   Photo images obtained from DMV Photo **SHALL NOT** be used as fillers in a photo or video array.

10.05   Photo images obtained from DMV Photo **SHALL NOT** be used in more than one investigation. If an individual has been the subject of a previous request to DMV Photo by the LEA, a new request must be submitted and properly documented prior to making a subsequent request for the image.

10.06   As stated above, DMV Photo images are for investigative purposes only.   It is **NOT** permissible to use DMV Photo for any other purpose, including:

    10.05.1   personal use;
    10.05.2   sale, publication or disclosure for commercial purposes; or,
    10.05.3   release to the public, unless the release occurs as part of an official law enforcement investigation and the subject of interest is wanted pursuant to a sworn arrest warrant or is a missing person.

11.0   **OUT-OF-STATE REQUESTS**

11.1   It is not permissible for a Requestor to request a DMV Photo image on behalf of another LEA, including out-of-state agencies.

11.2   All inquiries for a DMV Photo image made to a participating LEA by an out-of-state agency must be denied and the out-of-state agency directed to submit their request to the New York State Intelligence Center (NYSIC) at (518) 786-2100 or 866-48-NYSIC (866-486-9742), or via email to CIU@nysic.ny.gov.

11.3   Upon receipt of a request for a DMV Photo image by an out-of-state agency, NYSIC must validate that the requesting agency is a law enforcement agency, confirm that the request relates to a subject of interest as defined within section

2.01 above, and advise the out-of-state agency that they must comply fully with the terms of the Driver's Privacy Protection Act of 1994 ("DPPA") (18 USC §2721 et seq*.), the* Information Security Breach and Notification Act ("ISBNA") (General Business Law §899-aa and State Technology Law §208) and all other applicable laws and regulations respecting access to and use of motor vehicle records.

11.4   NYSIC will record the following information when submitting a request for a DMV Photo image via eJustice on behalf of an out-of-state agency:
     11.04.1   Title, address and phone number of the out-of-state agency
     11.04.2   Name, rank and phone number of out-of-state requestor;
     11.04.3   the LEA specific case number and the purpose of the request;
     11.04.4   the date and time of request; and,
     11.04.5   the name and client identification number of the person whose image was requested.

11.5   NYSIC personnel processing a request to obtain a DMV photo on behalf of an out-of-state Requestor must use the "Out-of-State" reason code when submitting the request via eJustice.

11.6   Pursuant to DPPA, NYSIC must keep for a period of 5 years the information described in section 11.4 above for each out-of-state request.

12.0   SECURITY/AUDIT

12.01   To ensure that DMV Photo will be used for investigative purposes only, an electronic audit log of each request submitted by individual Requestors will be maintained by DCJS.

12.02   The DMV Photo audit log will capture the following information for every submission:

     12.02.1   Name and ORI number of the LEA
     12.02.2   eJusticeNY user ID;
     12.02.3   the LEA specific case number (if applicable);
     12.02.4   the date and time of request;
     12.02.5   the reason code for the request;
     12.02.6   the name and client identification number of the person whose image was requested
     12.02.7   the DMV transaction number, date and time, disposition code and/or error message; and
     12.02.8   the contents, if any, of the optional comments field

12.03   A DMV Photo audit log, specific to each LEA, will be available on *eJusticeNY*. To access the audit log, the individual designated by the LEA to internally audit use of DMV Photo must access the "Agency Administration" suite on *eJusticeNY*,

click "Audit Log" and select "DMV Photo Audit Request Log". The LEA shall use the audit log to regularly review submissions to DMV Photo to ensure that requests for photo images are made pursuant to section 8.03 above.

12.04   Remote audits of DMV Photo usage by the LEA will be conducted to identify potential misuse of the system. Should the remote audit reveal possible misuse, an on-site audit of the LEA will then be performed.

12.05   Regular on-site audits of DMV Photo usage will be performed every three years by DCJS in conjunction with their routine audits of eJusticeNY use. Site audits, which may or may not be announced, will require the LEA to make available to DCJS auditors all available records corresponding to every request submitted to DMV Photo during the previous five years.

13.0   CONCLUSION

13.01   Use of a photo image from DMV Photo in violation of the terms and conditions set forth in this Policies and Procedures Manual, the DPPA and any other applicable laws or regulations respecting access and use of motor vehicle records may result in the disqualification of the LEA or Requestor from future participation in DMV Photo.

_____

Agency Executive Officer or Chief (Title/Name)

_____   _____

Signature   **Date**

List Additional ORI's: