



Board of County Commissioners Agenda Request

25
Agenda Item #

Requested Meeting Date: March 24, 2015

Title of Item: and Electronic License System Point-of-Sale Contract Renewals

<input type="checkbox"/> REGULAR AGENDA <input checked="" type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input checked="" type="checkbox"/> Approve/Deny Motion <input type="checkbox"/> Adopt Resolution (attach draft)	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing* <small>*provide copy of hearing notice that was published</small>
Submitted by: Kirk Peysar, County Auditor		Department: County Auditor
Presenter (Name and Title): Kirk Peysar, County Auditor		Estimated Time Needed: n/a
Summary of Issue: Approve and authorize signatures to the and Electronic License System Point-of-Sale Contract Renewals		
Alternatives, Options, Effects on Others/Comments: 		
Recommended Action/Motion: Approve and authorize signatures to the renewal contracts		
Financial Impact: Is there a cost associated with this request? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No What is the total cost, with tax and shipping? \$ as attached Is this budgeted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i>		

Legally binding agreements must have County Attorney approval prior to submission.

Kirk Peysar
Aitkin County Auditor
209 Second Street Northwest Room 202
Aitkin, Minnesota 56431
218.927.7354

March 18, 2015

To: Board of Commissioners

From: Kirk Peysar, County Auditor



Re: MN-DNR ELS Agent Contract and Electronic License System Point-of-Sale
Contract Renewals

Request for approval of the ELS Agent Contact and Electronic License System Point-of-Sale Contract Renewals with MN-DNR authorizing the processing and issuance of watercraft and off-road titles and licenses; trail stickers at the Aitkin County License Center.

The term of the renewal agreements is through June 30, 2019.

**STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
REGISTRATION AND TITLING ELS AGENT CONTRACT
WITH DEPUTY REGISTRAR OF MOTOR VEHICLES OFFICES**

This Contract is between the State of Minnesota, acting through the Department of Natural Resources (hereinafter DNR) and

Aitkin County License Center	083		
(Business or Deputy Registrar Office) 2-2nd ST NW	(Deputy Registrar Number)		
(Street Address)			
Aitkin	MN	56431	Aitkin
(City)	(Zip code)	(County)	
(Authorized Representative for Corporation or Owner)			

(Hereinafter Agent)

WHEREAS, Deputy Registrar of Motor Vehicles, appointed by the Commissioner of Public Safety under Minnesota Statute 168.33, is required under Minnesota Statutes to process applications for watercraft licenses, watercraft titles, snowmobile, all-terrain vehicle, off-highway motorcycle, off road vehicle registrations, trail stickers and permits for the commissioner of natural resources.

NOW THEREFORE, it is agreed between DNR and the Agent as follows:

1. AGENT DUTIES

The Agent will:

- a) Make available for sale to the public the following types of electronic licenses, registrations, stickers, permits and title transactions: all watercraft licenses, all all-terrain vehicle registrations, all snowmobile registrations, all off highway motorcycle registrations and all off road vehicle registrations and collect any sales and use tax as required by law. The Agent will do so in strict accordance with (1) the terms of this Contract; (2) all instructions and rules/ regulations issued by DNR.
- b) Sell electronic licenses, stickers, permits, registrations and title transactions and collect sales and use tax, when applicable, only at the business location approved under their appointment by the commissioner of public safety and at a place on the premises accessible to the public.
- c) Issue electronic licenses, stickers, registrations and title transactions to the public during open business hours
- d) As instructed by DNR, maintain displays, notices or other informational materials relating to electronic licenses, stickers, registrations and title transactions that are provided by DNR.
- e) Provide a personal computer, Internet service provider, and necessary phone or network to access the administrative screen functions of the electronic license system (ELS) for registration and titling.
- f) Maintain current and accurate records of all electronic licenses, stickers, registrations and title transactions and sales and use tax collected in conformance with law and as directed by DNR.

- g) Maintain a bank account in an FDIC insured banking association, savings association, trust company, or credit union organized under the authority of the State or the United States. The bank account will be able to accept electronic funds transfers. The Agent will provide DNR with all of the requested account information.
- h) Deposit all money received from the sale of electronic licenses, stickers, registrations, title transactions, and sales and use tax collected as required for watercraft, snowmobile and all OHV transactions in the account described above, less the amount retained according to law as the filing or issuing fee. The Agent's bank account will be set up to permit DNR, through the State treasurer, to electronically transfer the money to the State treasury.
- i) File with DNR, on a form and in a manner as DNR may require, reports of the Agent's receipts and transactions concerning the sale of electronic licenses, registrations, stickers, titles and sales and use tax collection.
- j) Return to DNR on a weekly basis, completed applications and title forms as required by DNR.
- k) Complete and provide a true and accurate state and federal Taxpayer Identification Number (TIN) verification form.
- l) Return voided licenses to the DNR within 30 days. After 30 days, voided licenses will be charged to the Agent.
- m) The Agent shall make reasonable business efforts to comply with the most recent version of the Payment Card Industry Data Security Standard (PCI DSS), promulgated by the PCI Security Standards Council.

2. DNR's DUTIES

DNR, or its duly authorized representative, will:

- a) Provide a printer, access to administrative screens for processing registration and titling transactions and sales and use tax collection, printer paper and necessary supplies at each authorized Agent location. Provide routine maintenance for necessary repairs on printer not due to abuse or neglect by the Agent or the Agent's employees
- b) Provide appropriate training materials and a toll free telephone help desk service to answer Agent's questions and assist with problems.
- c) Provide informational materials for the Agent to distribute to licensees and registrants regarding regulation requirements for recreational vehicle and watercraft activities.
- d) Notify the Agent of the designated amounts to be transferred and the designated time of transfer prior to electronic transfer of funds.
- e) Provide the Agent with instructions for the transfer of funds from the Agent's bank account to the State treasury and instructions for reconciling any differences between the Agent and DNR on the amount of money to be electronically transferred.

3. RESTRICTRIONS ON SALE OF ELECTRONIC LICENSES, REGISTRATIONS, STICKERS AND TITLE TRANSACTIONS

- a) All electronic licenses, registrations, stickers, and title transactions, will be completed at the Agent's business location.
- b) The Agent is responsible for the completion of each electronic license registrations, sticker and title transaction at the Agent's place of business.
- c) An Agent will not offer electronic licenses, registrations, stickers or title transactions for free or at nominal, reduced, or increased fee except as provided by Minnesota Statute
- d) An Agent will not waive all or part of the issuing or filing fee or use electronic licenses, registrations, stickers or title transactions in connection with a drawing, raffle, giveaway, or other sales promotion.

4. RESPONSIBILITY FOR MATERIALS AND EQUIPMENT

- a) Except for acts beyond their control, the Agent will be responsible for damaged, lost, stolen, missing, or destroyed electronic licenses and materials and point of sale equipment relating to electronic licenses.
- b) The Agent will be responsible for their personal computers and any services or contracts or agreements with local Internet service providers.
- c) The Agent is required to carry insurance to insure property provided by DNR

5. DNR ACCESS TO ELECTRONIC LICENSE OPERATIONS

- a) The Agent agrees to allow DNR access to all materials and equipment related to its electronic license operations
- b) DNR may make inspections during open business hours with or without notice to the Agent to determine whether the Agent is complying with the provisions of Minnesota Rules and Statutes related to electronic licensing and the terms of this Contract. The Agent agrees to allow DNR to inspect the Agent's business location at other times upon reasonable notice to determine whether the Agent is complying with the provisions of the Minnesota Rules, Statutes and the terms of this Contract.

6. LIABILITY

- a) The Agent agrees to be responsible for and liable for all proceeds from the sale of electronic licenses, registrations, titles, stickers and sales and use tax collection regardless of the manner of payment and for all losses incurred, including but not limited, to those due to theft, credit card fees, non-sufficient funds checks and counterfeit currency.
- b) Agent agrees that any contractual or tortious liability arising from the performance of this Contract by the Agent, its agents or employees, is the Agent's sole responsibility. The Agent agrees to indemnify and hold the State, its agents and employees, harmless from all claims or causes of action, including all attorney fees incurred by the State arising from such performance of this Contract by the Agent or its agents or employees. This provision will not be construed to bar any legal remedies the Agent may have for the State's failure to fulfill its obligations under this Contract.

7. AGENT STATUS

- a) The Agent agrees that in its capacity as an Agent to sell electronic licenses, registrations, titles and stickers, the Agent is acting on behalf of the State and DNR.
- b) The Agent agrees to be bound by and comply with the provisions of law, rules and instructions and orders issued by DNR.

8. DURATION OF AGENT CONTRACT; TRANSFERABILITY

- a) This Contract will be effective upon the date that the final required signature is obtained in accordance with Minn. Statute § 16C.05 and will remain in effect until 11:59 p.m. on **June 30, 2019** unless terminated, canceled or suspended as provided herein.
- b) This Contract remains in effect until the Contract is terminated in writing at the request of the Agent or is terminated, canceled or suspended by DNR as stated in 9(a) or unless the Agent appointment is terminated, canceled or suspended by the Department of Public Safety.
- c) The Agent will not assign, delegate or transfer any rights, obligations or duties under this Contract without the prior written consent of DNR.
- d) Transfer of ownership of a Deputy Registrar is subject to approval by the commissioner of public safety.

- e) The Agent will notify the Authorized Representative in writing at least 30 days before any change of its business location, nature of business, or ownership. The DNR will consider a Contract based on the new application criteria under Minnesota R. pt. 6213.310 when there is a change in business location, nature of business, hours of operation or ownership. The DNR will cancel the Contract if the Agent no longer meets the criteria for acceptance of an original application. A new owner must submit an application, which is subject to approval by the DNR.
- f) The Agent will provide to the DNR's Authorized Representative or his/her successor, in the event of Agent's change in financial or ownership status of the location specified within this contract including bankruptcy, foreclosure, lease termination or property sale.
 - (1) Authorized Representative for DNR:
Ray Kappers
Department of Natural Resources
500 Lafayette Road, St Paul, MN 55115
Email: ray.kappers@state.mn.us

9. FORFEITURE OR SUSPENSION OF CONTRACT

- a) Per termination, cancellation or suspension provisions in Paragraph 8(b), this Contract may be terminated and the Agent's right to sell licenses, titles, registrations, stickers and permits are forfeited if DNR finds that the Agent:
 - (1) Provided false or misleading information on the Agent's application to DNR;
or
 - (2) While performing its duties as an Agent of DNR under this Contract, the Agent acted in a manner prejudicial to the public confidence in the integrity of DNR.
- b) DNR may suspend this contract until the Agent returns to compliance if the DNR finds that the Agent:
 - (1) Changed business location without proper notice to the DNR;
 - (2) Failed to account for materials and equipment for operation of the electronic license system;
 - (3) Failed to comply with a term or condition of this Contract;
 - (4) Committed an act that impairs the Agent's reputation for honesty and integrity related to fulfilling its duties as an agent of the DNR;
 - (5) Failed to properly display license point of sale equipment and materials; or
 - (6) Failed to have financial stability or responsibility to act as an Agent including, but not limited to, evidence of inadequate accounting records or a failure to maintain sufficient funds from the sale of electronic licenses, registration, titles and stickers and collection of sales and use taxes in the appropriate bank account.
- c) Agent's may be suspended or terminated if the Automated Clearing House (ACH) withdraws fail:
 - (1) First Fail: When an Agent's ACH attempt fail once in a 12 month period, the Agent is contacted by DNR staff, the reason for the fail is determined and a retry is made to transfer the funds within five business days. If the retry fails, the Agents' account is placed in a suspended status, which prevents further ELS sales to occur. This is considered a second fail.
 - (2) Second Fail: When an Agent's ACH attempt fails twice in a 12 months period or an ACH retry fails, the Agent is contacted by DNR staff, the reason for the fail is determined and a retry is made to transfer the funds within five

business days. In addition, the Agent's account is placed in a suspended status immediately, which prevents further ELS sales to occur, but does allow the ACH retries to be processed. The Agent will be notified in writing of this action. The Agent will remain suspended until the ACH retries have been processed and cleared, or a certified cashier's check is delivered to the License Center for the entire amount of the failed ACH transfer.

- (3) Third Fail: When an Agent's ACH fails three times or the total failed ACH and Failed ACH retried total is three or more within a 12 months period, the Agent is contacted by DNR staff on the same day the report is available, the reason for the fails is determined and a retry is made to transfer the funds. In addition, the Agent will be put in suspended status, and the Agent will be notified of our intent to terminate the Agent's contract, and recover the ELS equipment. The Agent may submit a "request for reconsideration" within 30 days.
 - (4) Agents who have three fails and are closed and do not meet fiscal obligations provided for by the Agent contract will be referred to the State collection services.
- d)
- (1) If this Contract is forfeited or suspended, the DNR will notify the Agent in writing. The Agent may within 30 days from the day the notice was mailed, request that the DNR reconsider the forfeiture or suspension. A request for reconsideration will include a written statement setting forth the Agent's legal, factual, or equitable arguments, along with any supporting documents. DNR may request that the Agent submit additional facts or documents before making a final decision. DNR, after considering any additional facts or documents submitted by the Agent, will make a decision on whether or not to revoke the forfeiture or suspension of this Contract.
 - (2) In the event of cancellation, recovery of equipment must be within 30 days and a final reconciliation will be done of funds and any outstanding debt owed to the DNR.

10. AMENDMENTS

Any amendments or modifications to this Contract will be in writing and will not be effective until executed by the parties to this Contract and approved by all officials as required by law.

11. AUDITS

The books, records, documents, and accounting procedures and practices of the Agent and its employees, agents, or subcontractors relevant to this Contract will be made available and subject to examination by DNR, Legislative Auditor and State Auditor for a minimum period of six years from the date of transaction.

12. DATA PRACTICES ACT

The Agent will comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the DNR in accordance with this Contract, and as it applies to all data, collected, received, stored, used, maintained, or disseminated by the Agent in accordance with this Contract. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this Article by either the Agent or the DNR. ELS data may only be used in the normal course of business for the use of processing ELS transactions.

13. AFFIRMATIVE ACTION

- a) The Agent certifies pursuant to Minnesota Statute § 363A.36 that: (a) the Agent has not had more than 40 full-time employees at any time during the twelve months preceding the date it submitted its response to the DNR; or (b) if the Agent has more than 40 full-

time employees within the State of Minnesota on a single working day during the previous twelve months preceding the date the Agent submitted its response to the DNR, that it has an affirmative action plan pursuant to the requirements of Minnesota Statutes § 363A.36 for the employment of minority persons, women and qualified disabled individuals approved by the State of Minnesota, Commissioner of Human Rights; or (c) if the Agent does not have 40 full time employees within the State Minnesota on a single working day during the previous twelve months preceding the date it submitted its response to the DNR, but has had more than 40 full-time employees on a single working day during the previous twelve months in the State in which it has its primary place of business, then (1) the Agent has current Minnesota certificate of compliance issued by the Minnesota Commissioner of Human Rights, or (2) the Agent certifies that it is in compliance with federal Affirmative Action requirements.

- b) If the Agent has more than 40 full-time employees within the State of Minnesota on a single working day during the previous twelve months. The Agent will comply with the following Affirmative Action requirements for disabled workers:

MINN. R. 5000.3550 DISABLED INDIVIDUALS AFFIRMATIVE ACTION CLAUSE

- (1) The Agent will not discriminate against any employees or applicants for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Agent agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship
- (2) The Agent agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act
- (3) In the event of the Agent's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statute § 363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (4) The Agent agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices will be the DNR or the Agent's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employments, and the rights of applicants and employee.
- (5) The Agent will notify each labor union or representative of workers with which it has a collective bargaining agreement or other Agreement understanding, that the Agent is bound by the terms of Minnesota Statute § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

14. ANTITRUST

The Agent hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

15. WORKERS' COMPENSATION

Contractor certifies that it is in compliance with Minnesota Statute § 176.182, Subd. 2, pertaining to worker's compensation insurance coverage. The Contractor's employees and Agents will not be considered State employees. Any claims that may arise under the Minnesota Worker's Compensation Act on behalf of these employees or Agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or Agents are in no way the State's obligation or responsibility.

16. COMPLETE CONTRACT

This Contract and any executed amendments constitute the entire Contract between the parties with regard to the matters set forth herein.

17. JURISDICTION AND VENUE

The laws of the State of Minnesota thereto, will govern this Contract and executed amendments. Venue for all legal proceedings arising out of this Contract, or breach thereof, will be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

1. AGENT

Agent certifies that the appropriate person(s) have executed the agreement as required by articles, by-laws, resolutions or ordinances, and that, such articles by-laws, resolutions or ordinances have been forwarded to the Department of Natural Resources with this Contract.

By: _____
(Authorized Signature)

Title: _____

Date: _____

2. DEPARTMENT OF NATURAL RESOURCES

By: _____
(With Delegated Authority)

Title: _____

Date: _____

3. COMMISSIONER OF ADMINISTRATION

As delegated by Materials Management Division

By: _____
(Authorized Signature)

Title: _____

Date: _____

**STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
ELECTRONIC LICENSE SYSTEM POINT-OF-SALE AGENT CONTRACT**

This Contract is between the State of Minnesota, acting through the Department of Natural Resources (hereinafter DNR) and

1001

Aitkin County d/b/a Aitkin County License Center
(Corporation or Owner) (Business Name)

2 2nd St NW
(Street Address)

Aitkin MN 56431 Aitkin
(City) (State) (Zip code) (County)

(Authorized Representative for Corporation or Owner)

(Hereinafter Agent)

WHEREAS, DNR, pursuant to Minnesota Statute § 84.027, Subd. 15, and other applicable law, is authorized to appoint Agents to sell electronic licenses under the Electronic License System (ELS); and

WHEREAS, the Agent has filed an application with the DNR to become an Agent and represents that it is duly qualified and willing to perform the services set forth herein.

NOW THEREFORE, it is agreed between the DNR and the Agent as follows:

1. AGENT DUTIES

The Agent will:

- a. Make available for sale to the public the following types of electronic licenses: all fee and no-fee application, license, pass, permit, sticker, registration or any other future electronic transactions relating to the DNR licensing, issued under the electronic license system. The Agent will do so in strict accordance with (1) the terms of this Contract; (2) all instructions, rules and regulations issued by the DNR; and (3) the terms of ELS, which is incorporated by reference herein and made a part of this Contract.
- b. Collect survey information as instructed by the DNR including, but not limited to, the Federal Harvest Information Program Survey (HIP), and fish survey.
- c. Sell electronic licenses only at the business location specified in its application and at a place on the premises accessible to the public.
- d. Issue electronic licenses to the public during the times specified in its application.
- e. Maintain, as instructed by the DNR, displays, notices or other informational materials relating to electronic licenses that are provided by the DNR.
- f. An agent must agree to provide a communications connection to the point-of-sale equipment. The point-of-sale access required for the next generation point-of-sale system will require an established connection to the Internet. A telephone line or broadband connection (DSL, cable modem or corporate network) and access to electrical outlets will be required. The point-of-sale equipment will utilize a toll-free telephone number to the electronic license system if a phone line is used. The communication requirements may change as technology advances.
- g. Maintain current and accurate records of all electronic license operations in conformance with law and as directed by the DNR.

- h. Maintain a bank account in an FDIC insured banking association, savings association, trust company, or credit union organized under the authority of the State or the United States. The bank account will be able to accept electronic fund transfers. The Agent will provide the DNR with all of the account information requested by the DNR.
- i. Deposit all money received from the sale of electronic licenses in the account described above, less the amount retained according to law as the issuing fee. The Agent's bank account will be set up to permit the DNR, through the State Treasurer, to electronically transfer the money to the State Treasury.
- j. File with the DNR, on a form and in a manner as the DNR may require, reports of the Agent's receipts and transactions concerning the sale of electronic licenses.
- k. Complete and provide a true and accurate state and federal Taxpayer Identification Number (TIN) verification form.
- l. Return voided licenses to the DNR within 30 days. After 30 days, voided licenses will be charged to the Agent.
- m. The Agent shall make reasonable business efforts to comply with the most recent version of the Payment Card Industry Data Security Standard (PCI DSS), promulgated by the PCI Security Standards Council.

2. DNR DUTIES

The DNR, or its duly authorized representatives, will:

- a. Provide an online terminal and printer, with printer paper and necessary supplies, at each authorized agent location and provide routine maintenance on the terminal for necessary repairs not due to abuse or neglect by the Agent or the Agent's employees.
- b. Provide appropriate training materials and a toll free telephone "help desk" service to answer Agent's questions and assist with problems.
- c. Provide informational training materials for the Agent to distribute to licensees regarding regulation requirements for game and fish activities.
- d. Notify the Agent of the designated amounts to be transferred and the designated time of transfer prior to electronic transfer of funds.
- e. Provide the Agent with instructions for the transfer of funds from the Agent's bank account to the State Treasury and instructions for reconciling any differences between the Agent and the DNR on the amount of money to be electronically transferred.

3. RESTRICTIONS ON SALE OF ELECTRONIC LICENSES

- a. All electronic licenses will be completed at the Agent's business location. The Agent is responsible for the completion of each electronic license transaction for each electronic license sold at the Agent's place of business.
- b. An Agent will not issue a resident license to a person unless the Agent ascertains that the applicant is a resident as defined by Minnesota Statutes.
- c. An Agent will not offer electronic licenses for free or at nominal, reduced, or increased fee except as provided by Minnesota Statutes.

NOTE: This statute does not supersede any agreement the Agent has with electronic bankcard issuers concerning charging customers a convenience fee.

- d. An Agent will not waive all or part of the issuing fee or use electronic licenses in connection with a drawing, raffle, giveaway, or other sales promotion.

4. RESPONSIBILITIES FOR MATERIALS AND EQUIPMENT

Provide a location for the ELS equipment that protects it from damage and unauthorized use.

- a. Except for acts beyond their control, an agent will be responsible for lost, stolen, missing or destroyed electronic licenses and materials and point-of-sale equipment relating to electronic licenses. An Agent, except for those Agents who are appointed as a deputy registrar of motor vehicles by the commissioner of public safety under Minnesota Statute, section 168.33, must provide a deposit of \$200 for the equipment. Each additional set of equipment will require an additional \$150 deposit. The deposit will be held in a clearing account. The deposit will be refunded at the time an agent terminates the agent's contract if all point-of-sale equipment and

related materials are returned to the commissioner in good working condition. If the equipment is not returned within 30-days, the deposit will be used towards the cost of replacing the terminal. An Agent's deposit may be applied to any outstanding debt owed to the DNR.

5. DNR ACCESS TO ELECTRONIC LICENSE OPERATIONS

- a. The Agent will allow the DNR access to all materials and equipment related to its electronic license operations.
- b. The DNR may make inspections during open business hours with or without notice to the Agent to determine whether the Agent is complying with the provisions of Parts 6213.0100 to 6213.0800 of the Minnesota Rules and the terms of this Contract. The Agent will allow the DNR to inspect the Agent's business location at other times upon reasonable notice to determine whether the Agent is complying with the provisions of Parts 6213.0100 to 6213.0800 of the Minnesota Rules and the terms of this Contract.

6. LIABILITY

- a. The Agent will be responsible for, and liable for, all proceeds from the sale of electronic licenses regardless of the manner of payment and for all losses incurred due to theft, credit card fees, non-sufficient funds checks, and counterfeit currency.
- b. The Agent agrees that any contractual or tortious liability arising from the performance of this Contract by the Agent or its Agents or employees is the Agent's sole responsibility. The Agent agrees to indemnify and hold the State, its Agents and employees, harmless from any and all claims or causes of action, including all attorney fees incurred by the State arising from such performance of this Contract by the Agent or its Agents or employees. This provision will not be construed to bar any legal remedies the Agent may have for the State's failure to fulfill its obligations under this Contract.

7. AGENT STATUS

- a. The Agent agrees that, in its capacity as an Agent to sell electronic licenses, the Agent is acting on behalf of the State and the DNR.
- b. The Agent agrees to be bound by and comply with any provisions of all applicable provisions of law, rules, instructions and orders issued by the DNR.

8. DURATION OF AGENT CONTRACT: TRANSFERABILITY

- a. This Contract will be effective upon the date that the final required signature is obtained in accordance with Minnesota Statute § 16C.05 and will remain in effect until 11:59 PM, **June 30, 2019**, unless terminated, canceled or suspended as provided herein.
- b. This Contract remains in effect until the Contract is terminated in writing at the request of the Agent or is terminated, canceled or suspended by the DNR as stated in 9(a). In addition, Minnesota Statute § 97A.485, Subd. 3, authorizes the DNR to revoke the contract at any time.
- c. The Agent will notify the Authorized Representative in writing at least 30 days before any change of its business location, nature of business, or ownership. The DNR will consider a Contract based on the new application criteria under Minnesota R. pt. 6213.0310 when there is a change in business location, nature of business, hours of operation or ownership. The DNR will cancel the Contract if the Agent no longer meets the criteria for acceptance of an original application. A new owner must submit an application, which is subject to approval by the DNR.
- d. The Agent will provide notice to the DNR's Authorized Representative, or his/her successor, in the event of Agent's change in financial or ownership status of the location specified within this contract including bankruptcy, foreclosure, lease termination or property sale.
- e. The Agent will not assign, delegate or transfer any rights, obligations or duties under this Contract without the prior written consent of the DNR.

9. AUTHORIZED REPRESENTATIVE FOR DNR:

Ray Kappers
Department of Natural Resources
500 Lafayette Road, St. Paul, MN 55155
Email: ray.kappers@state.mn.us

10. FORFEITURE OR SUSPENSION OF CONTRACT

- a. In addition to suspension under Minnesota Statute § 97A.311, Subd. 4, this Contract may be terminated and the Agent's right to handle and sell licenses forfeited if the DNR finds that the Agent:
 1. Provided false or misleading information on the Agent's application to the DNR; or
 2. While performing its duties as an Agent of the DNR under this Contract, The Agent acted in a manner prejudicial to the public confidence in the integrity of the DNR.
- b. The DNR may cancel or suspend this Contract if the DNR finds that the Agent:
 1. Changed business location without proper notice to the DNR;
 2. Failed to account for materials and equipment for operation of the electronic license system;
 3. Failed to comply with a term or condition of this Contract;
 4. Committed an act that impairs the Agent's reputation for honesty and integrity related to fulfilling its duties as an Agent of the DNR;
 5. Failed to properly display license point of sale equipment and materials; or
 6. Failed to have the financial stability or responsibility to act as an agent including, but not limited to, evidence of inadequate accounting records or a failure to maintain sufficient funds from the sale of electronic licenses in the appropriate bank account.
 7. Misuse of ELS data. ELS data may only be used in the normal course of business for the use of processing ELS transactions.
- c. Agent's may be suspended or terminated if the ACH withdraws fail:
 1. First Fail: When an Agent's ACH attempt fail once in a 12 months period, the Agent is contacted by the DNR staff, the reason for the fail is determined and a retry is made to transfer the funds within five business days. If the retry fails, the Agent's account is placed in a suspended status, which prevents further ELS sales to occur. This is considered a second Fail.
 2. Second Fail: When an Agent's ACH attempt fails twice in a 12 months period or an ACH retry fails, the Agent is contacted by the DNR staff, the reason for the fail is determined and a retry is made to transfer the funds within five business days. In addition, the Agent's account is placed in a suspended status immediately, which prevents further ELS sales to occur, but does allow the ACH retries to be processed. The Agent will be notified in writing of this action. The Agent will remain suspended until the ACH retries have been processed and cleared, or a certified cashier's check is delivered to the DNR License Center for the entire amount of the failed ACH transfer.
 3. Third Fail: When an Agent's ACH fails three times or the total failed ACH and failed ACH retried total is three or more within a 12 months period, the Agent is contacted by the DNR staff on the same day the report is available, the reason for the fails is determined and a retry is made to transfer the funds. In addition, the Agent will be put in suspended status, and the Agent will be notified of our intent to terminate the Agent's contract, and recover the ELS equipment. The Agent may submit a "request for reconsideration" within 30 days.
 4. Agents who have three fails and are closed and do not meet fiscal obligations provided for by the Agent contract will be referred to the State collection services.
- d.
 1. If this Contract is forfeited or suspended, the DNR will notify the Agent in writing. The Agent may within 30 days from the day the notice was mailed, request that the DNR reconsider the forfeiture or suspension. A request for reconsideration will include a written statement setting forth the Agent's legal, factual, or equitable arguments, along with any supporting documents. DNR may request that the Agent submit additional facts or documents before making a final decision. DNR, after considering any additional facts or documents submitted by the Agent, will make a decision on whether or not to revoke the forfeiture or suspension of this Contract.
 2. In the event of cancellation, recovery of equipment must be within 30 days and a final reconciliation will be done of funds and any outstanding debt owed to the DNR.

11. AMENDMENTS

Any amendments or modifications to this Contract will be in writing and will not be effective until executed by the parties to this Contract and approved by all officials as required by law.

12. AUDITS

The books, records, documents, and accounting procedures and practices of the Agent and its employees, agents, or subcontractors relevant to this Contract will be made available, and subject to examination by DNR, Legislative auditor, and State Auditor for a minimum period of six years from the date of transaction.

13. DATA PRACTICES ACT

The Agent will comply with the Minnesota Government Data Practices Act, Minnesota Statute §13, as it applies to all data provided by DNR in accordance with this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Agent in accordance this Contract. The civil remedies of Minnesota Statute Ch. 13.08 apply to the release of the data referred to in this clause by either the Agent or the DNR.

14. AFFIRMATIVE ACTION (When applicable)

- a. The Agent certifies pursuant to Minnesota Statute § 363A.36 that: (a) the Agent has not had more than 40 full-time employees at any time during the twelve months preceding the date it submitted its response to the DNR; or (b) if the Agent has more than 40 full-time employees within the State of Minnesota on a single working day during the previous twelve months preceding the date the Agent submitted its response to the DNR, that it has an affirmative action plan pursuant to the requirements of Minnesota Statutes § 363A.36 for the employment of minority persons, women and qualified disabled individuals approved by the State of Minnesota, Commissioner of Human Rights; or (c) if the Agent does not have 40 full time employees within the State Minnesota on a single working day during the previous twelve months preceding the date it submitted its response to the DNR, but has had more than 40 full-time employees on a single working day during the previous twelve months in the State in which it has its primary place of business, then (1) the Agent has current Minnesota certificate of compliance issued by the Minnesota Commissioner of Human Rights, or (2) the Agent certifies that it is in compliance with federal Affirmative Action requirements.
- b. If the Agent has more than 40 full-time employees within the State of Minnesota on a single working day during the previous twelve months. The Agent will comply with the following Affirmative Action requirements for disabled workers:
MINN. R. 5000.3550 DISABLED INDIVIDUALS AFFIRMATIVE ACTION CLAUSE.
 1. The Agent will not discriminate against any employees or applicants for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Agent agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
 2. The Agent agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 3. In the event of the Agent's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statute § 363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 4. The Agent agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices will be the DNR or the Agent's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employments, and the rights of applicants and employee.
 5. The Agent will notify each labor union or representative of workers with which it has a collective bargaining agreement or other Agreement understanding, that the Agent is bound by the terms of Minnesota Statute § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

15. **WORKERS' COMPENSATION**

Contractor certifies that it is in compliance with Minnesota Statute § 176.181, subd.2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

16. **ANTITRUST**

The Agent hereby assigns to the State of Minnesota any, and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

17. **COMPLETE CONTRACT**

This Contract and any executed amendments constitute the entire Contract between the parties with regard to the matters set forth herein.

18. **JURISDICTION AND VENUE**

The laws of the State of Minnesota thereto, will govern this Contract and executed amendments. Venue for all legal proceedings arising out of this Contract, or breach thereof, will be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

1. **AGENT**

Agent certifies that the appropriate person(s) have executed the agreement as required by articles, by-laws, resolutions or ordinances, and that, such articles by-laws, resolutions or ordinances have been forwarded to the Department of Natural Resources with this Contract.

By: _____
(Authorized Signature)

Title: _____

Date: _____

2. **DEPARTMENT OF NATURAL RESOURCES**

By: _____
(With Delegated Authority)

Title: _____

Date: _____

3. **COMMISSIONER OF ADMINISTRATION**

As delegated by Materials Management Division

By: _____
(Authorized Signature)

Title: _____

Date: _____