



**Memorandum of Agreement
Between the
New York State Department of Motor Vehicles
And the
United States Department of Homeland Security**

I. PARTIES

The Parties to this Memorandum of Agreement (hereinafter "MOA") are the Department of Homeland Security, hereinafter referred to as "DHS," and the New York State Department of Motor Vehicles, hereinafter referred to as "DMV" (collectively, the "Parties").

II. AUTHORITY

DHS is authorized to enter into this MOA pursuant to the Homeland Security Act of 2002, 6 U.S.C. § 112(b), as amended. DMV is authorized to enter into this MOA pursuant to New York State Vehicle & Traffic Law §§ 200, 494 and 508.

III. ENHANCED DRIVER LICENSE

A. PURPOSE

This MOA demonstrates the Parties' shared commitment to voluntarily offer in New York State an enhanced driver license and enhanced non-driver identification card. (The documents issued by New York State as an enhanced driver license or non-driver identification card will be collectively referred to in this MOA as the "Enhanced Driver License"). Under the voluntary project, DHS and DMV will develop and issue an Enhanced Driver License with facilitative technology to be used for border crossing purposes. The Secretary of Homeland Security expects to propose that a valid and lawfully obtained enhanced New York State driver license, or identification card for those who do not drive, be accepted as an alternative Western Hemisphere Travel Initiative (WHTI) document for land and sea border crossings. The project will allow the Parties to assess the desirability of offering the Enhanced Driver License as acceptable documents for WHTI. The Secretary of Homeland Security also expects the enhanced driver's license to align with Real ID requirements, generally consistent with the phases to be outlined in the Real ID final rulemaking.

B. BACKGROUND

WHTI implements a Congressional requirement that all United States citizens and other travelers to and from Canada, Mexico, Central and South America, the Caribbean and Bermuda present a passport or other accepted document that denotes the bearer's identity and citizenship to enter or re-enter the United States. The goal is to strengthen border security and facilitate entry into the United States for U.S. citizens. It is anticipated that the date of full WHTI implementation will

be in the summer of 2008. At that time, U.S. citizens traveling between the U.S. and Canada, Mexico, Central and South America, the Caribbean, and Bermuda by land or sea (including via ferries), may be required to present a valid U.S. passport or other document acceptable to the Secretary of Homeland Security.

The Parties anticipate that a New York State Enhanced Driver License will be an acceptable alternative document for U.S. citizens. Such an enhanced New York State document would advance the economic interests of Upstate New York, the State of New York and DHS.

The driver license is a nationally accepted means of identification. It is recognized that New York State already has strong procedures to securely confirm identity, and has recently increased that security through a number of anti-fraud security measures. New York's driver license and non-driver identification card can be enhanced to denote citizenship, based upon DMV's legislatively-granted power to establish internal procedures prescribing the manner in which licenses and non-driver identification cards are issued and what information must be submitted to obtain those documents. The holder of the New York State Enhanced Driver License will be able to use such a document to drive or to identify him or herself as well as denote citizenship at a border crossing – at a cost and convenience savings to the applicant.

New York residents enjoy traveling, shopping and vacationing in Canada. Similarly, Canadian residents enjoy traveling, shopping and vacationing in New York, greatly contributing to New York's economy. Recognizing that a significant portion of trade between the United States and Canada occurs at New York's multiple border crossing between the Provinces of Ontario and Quebec, a successful project of the Enhanced Driver License would greatly assist in continuing tourism and trade with Canada. This will increase the overall efficiency of the border crossing process, thereby reducing wait times for all.

A successful project will also serve the interests of DHS by increasing the use of facilitative technology, thereby facilitating cross border trade and travel, and providing an enhanced state driver license or identification card that can meet the security goals of the Congressional mandate.

C. PROJECT RESPONSIBILITIES

DMV shall be responsible for:

- (1) Issuing an Enhanced Driver License which denotes, pursuant to issuance standards jointly agreed upon by the Parties and provided for in a business plan to be developed by DMV, the identity and U.S. citizenship of New York State residents.
- (2) Including facilitative technology in or associated with the use of an Enhanced Driver License, that has been agreed to by DHS, to facilitate identity and citizenship validation through the sharing of information and include the current status of the card holder's right to use the Enhanced Driver License for cross border travel purposes.

(3) Developing a business plan for the voluntary project, in conjunction with DHS, which implements minimum business requirements acceptable to DHS, including incorporating Real ID requirements and protecting personally identifiable information.

(4) Providing DHS with the opportunity to review the operations of the project and responding to any Enhanced Driver License-related comments from DHS.

(5) Ensuring that employees involved in the project have undergone background checks as mutually agreed upon by the Parties.

The Department of Homeland Security shall be responsible for:

(1) Accepting, for purposes of WHTI, pending publication of regulations/notice on acceptable documents, New York State's denotation of identity and citizenship associated with an Enhanced Driver License that New York State issues.

(2) Providing facilitative technology specifications for the Enhanced Driver License, providing the facilitative technical specifications for an interactive validation process and utilizing these facilitative technologies.

(3) Establishing minimum standards for the project including issuance standards for the Enhanced Driver License.

(4) Approving a detailed New York State business plan for the project which implements minimum business standards mutually agreed to with New York State.

(5) Reviewing the operation of the project pursuant to the business plan and providing comments to New York State.

(6) Protecting the information shared and limiting its use to the intended purposes of this project.

It is intended that both the DMV and DHS will work in good faith to accomplish the preceding responsibilities in a timely manner so that implementation of the project will be accomplished approximately concurrent with the implementation of the requirement that individuals have a passport or other acceptable document to cross the land and sea borders consistent with the WHTI final rule.

D. POINTS OF CONTACT

FOR DHS:

Colleen M. Manaher
Director, WHTI PMO

FOR DMV:

Wayne L. Benjamin,
Executive Deputy Commissioner, New York State Department of Motor Vehicles

IV. DRIVER LICENSE SECURITY

DMV shall be responsible for:

- (1) Adopting procedures as soon as operationally practicable to issue Real ID compliant driver licenses and identification documents for non-U.S. citizens that identify the expiration of the legal presence document presented by the non-U.S. citizen, and institute processes to issue licenses that expire co-terminus with the legal presence document, and ensuring that the document's expiration date in no case exceeds 8 years from issuance.
- (2) Consistent with the requirements of the Real ID Act, clearly marking driver licenses and identification documents as not acceptable for official U.S. Government purposes, as that term is defined under the Real ID final rule once published, that are issued to individuals who have not established legal presence in the United States, and proceeding in a way that no licenses or identification documents shall be issued to such individuals until this marking provision is implemented.
- (3) Instituting a residency requirement for the issuance of New York driver license or identification cards before issuing such documents to individuals who have not established legal presence in the United States.
- (4) Taking steps to become Real ID compliant as soon as operationally practicable after the Real ID final rulemaking is published.

V. TERM AND TERMINATION

Either Party may terminate this MOA upon the giving of written notice thirty (30) calendar days in advance of the termination date to the other Party.

VI. MODIFICATION

Modifications within the scope of the MOA shall be made by mutual consent of the Parties, by the issuance of a written modification, signed and dated by both Parties.

VII. EFFECTIVE DATE

This MOA is effective on the date of the last signature hereon by the Parties.

VIII. CONFIDENTIALITY

Each Party understands that the other Party or third parties may disclose to it information designated by another party as confidential information related to the project discussed in this MOA ("Confidential Information").

Each Party agrees to maintain in confidence such information and will use this information solely to provide services related to the project under this MOA. Except as required by law, each Party shall not disclose this information to any person except authorized contractors who also agree not to disclose this Confidential Information. Each Party shall include requirements of

confidentiality for any person that has access to the Confidential Information pursuant to this MOA.

Each Party shall take reasonable measures to maintain the confidentiality of this information pursuant to the business plan. Each Party will immediately give notice to the other Party of any request for, use of or disclosure of Confidential Information and agrees to assist the other in responding to any request, remedying any use, or remedying any disclosure.

Further, DHS agrees that all materials containing Confidential Information received pursuant to this MOA concerning New York State's residents and its employees, and any other information which may be classified as confidential, shall not be disclosed to other persons without New York State's written consent except as may be required by law. Any personal information received by DHS shall be handled by DHS, as appropriate and necessary, in accordance with the Privacy Act of 1974, as amended.

Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure is in response to a valid order of a court order or other governmental body or is otherwise required by law; provided, however, that the party responding to the order or other legal requirements shall first give notice to the other party hereto and shall have, as appropriate:

- (a) fully cooperated in the other party's attempt to obtain a "protective order" from the appropriate court or other governmental body, or
- (b) attempted to classify such documents to prevent access by the public, in accordance with the provisions of the federal Freedom of Information Act ("FOIA") or similar State statutes.

IX. MISCELLANEOUS

This MOA does not confer a right or benefit on behalf of any third party and does not otherwise confer a right on any third party to enforce a term of this MOA.

This MOA represents the entire agreement between the Parties. No other understanding, oral or otherwise, regarding the subject matter of this MOA shall be deemed to exist or to bind any of the parties hereto.

This MOA does not obligate DHS funds for the State of New York Enhanced Driver License project.

This MOA may be executed in counterparts and/or via signatures transmitted by facsimile.

IN WITNESS WHEREOF, the Parties have signed two (2) duplicate originals of this MOA.

Department of Homeland Security

State of New York

(Signature) (Date)

(Signature) (Date)

Michael Chertoff
(Print Name)

Eliot Spitzer
(Print Name)

Secretary, Department of Homeland Security
(Title)

Governor, State of New York
(Title)

New York State Department of Motor Vehicles

David J. Swarts 10/26/07
(Signature) (Date)

David Swarts DAVID J. SWARTS
(Print Name)

Commissioner, NYS DMV
(Title)