

INTRODUCTION

These guidelines are intended to assist dealers when they are entering in to or renewing agreements with software service providers (i.e. vendors supplying dealer management, lead management, vehicle appraisal, loan car/test drive applications, customer relationship management and other similar systems).

They aim to establish and maintain strong and sustainable working relationships that recognise the important role both parties play in the sale, delivery, service and repair of new motor vehicles in Australia.

They were put together by a workgroup of AADA members and are designed to be fair and equitable for all parties who agree to follow them and provide guidance on the use, access, storage and handling of data contained in these systems, in accordance with the Australian Privacy Principles (APP's).

1. DATA OWNERSHIP/DEALER RIGHTS TO USE STORED DATA

a) Data stored in software supplied to a dealer under a purchase agreement will be freely accessible for use by the dealer for the term of the agreement. The use of this data by the dealer will be unrestricted and will allow the dealer to fulfil its obligations and perform its functions as a dealer, so long as it does not breach the APP's or the intellectual property rights of the vendor.

b) Where the vendor believes they have intellectual property rights over data contained in the system, the vendor must disclose the details before entering into an agreement.

c) The vendor agrees during the agreement, that they will not add restrictions or put in place any onerous processes which would hinder or block data that is currently being used in a

dealership or apply any additional charges to either the dealership or a third-party provider who is providing services to a dealership.

d) Industry standard data, including but not limited to vehicle inventory, customer data, service history, service appointments, parts inventory, and transactional data resulting from the use of software including data that links/associates customer and transactional information, will be readily available to the dealer in an exportable form so that third-party service providers can use this data to provide products and services to dealers. Charges to access this data will be limited to actual cost of providing the service and will be charged directly to the dealer.

e) The vendor agrees not to use the dealership's data for any internal or external use without first informing the dealer of its intentions to do so and first confirming such use complies with the APP's.

2. DATA SECURITY

a) All Personal Data (PD), Personal Information (PI), Personally Identifiable Information (PII) or Sensitive Personal Information (SPI) must be securely stored and encrypted while at rest and in transit. It must be securely transmitted in accordance with APP's. Service providers storing such data must do so in SOC 2 compliant data centres.

b) Where data is anonymised, all efforts must be taken to ensure re-identification is not possible.

c) Service providers must provide functionality to set data retention periods for different types of personal information held and provide functionality to ensure it is removed as required, or if required by a customer.

3. END OF TERM ARRANGEMENTS

a) All end of term arrangements, including costs, will be described in the agreement between a dealer and vendor. When such agreement comes to an end and is not being renewed, the data contained in the system will be available to the dealer in a form able to be transferred to another system. Dealers are granted the right to arrange a reasonable transition period in which they can continue to do business, while transitioning to a new provider.

b) If a vendor uses any external supplier's data via licence arrangement as part of the vendor/dealer agreement, this data would also be transportable to another approved third-party supplier or another vendor at the end of term.

Transitional Assistance

a) If requested by a dealer group, the vendor will provide 10 business days of assistance required by the dealer, at no additional cost, unless specified in the agreement, to ensure a smooth transition of the provision of services from the vendor to the dealer group or any other person engaged by the dealer.

b) It is expected that the vendor must provide transitional assistance:

(i) in a timely, professional and cost-effective manner.

(ii) in a way that ensures that there is no degradation of quality of the services during the transition.

(iii) to allow for an appropriate transfer of any work in progress to the dealer and alternative supplier.

(iv) by providing the dealer with all information it may require under this agreement upon expiry or termination of the agreement.

(v) by providing to the dealer, or an alternative supplier, information regarding the services that is necessary for the dealer or alternative supplier to assume responsibility for the services in an orderly manner; and

(vi) by providing all other reasonable assistance to the dealer group, an alternative supplier, or any third party nominated by the dealer group in relation to transition.

c) Renewals of agreements between dealers and vendors will not roll over automatically at the end of term. Vendors agree to provide a specified notice period to dealers prior to the agreement expiring. The notice period will be set between the parties and recorded in the original agreement, when it is entered in to. Where a dealer does not respond to the vendor during the notice period and there is no dispute over the terms, then the agreement will revert to a month-by-month arrangement at previously contracted/agreed rates.

d) Additional software or features provided during the term an agreement will not automatically extend the term.

4. TRANSPARENCY

a) Where a vendor has entered into an agreement with a third party to use stored data to provide services back to that dealer, the vendor will disclose the existence of its arrangements, to the extent it is able under commercially confidential terms.

b) All fees and charges that a dealer is liable for under an agreement with a vendor will be itemised and shown clearly in a schedule to the agreement, including any integration charges, third party costs and expenses associated with end of term arrangements.

c) Where dealer data stored in vendor provided system is enriched by the processes within the software (i.e. has additional information added to it) or is converted by the system into a proprietary format, the data will be able to be returned to its raw original form at the end of the agreement.

d) Where a dealership pays for any enrichment of data as part of the agreement with the vendor, this enriched data would then also form part of the data to be owned by the dealership and be able to be transferred to either a third party or the next vendor at the expiry of the existing vendors agreement.

e) Vendors will not unilaterally vary agreements. All changes to an agreement will be agreed to and signed off by both the dealer and vendor provider.

f) Vendors will not unilaterally increase the price of their systems in excess of any price rises allowed for and described in the agreement.

5. SYSTEM FUNCTIONALITY

System providers agree to maintain the functionality and features contained in the software provided for the duration of the agreed period. All parties agree that features and functions will not be removed from the software without consultation and mutual agreement. Any patches or updates applied to the software by the vendor cannot regress the application, apply restrictions or remove various services within the application that were included at no cost prior and then subsequently introduce replacement services with a cost.

6. NON-COMPETE RESTRICTIONS

Dealers will be free to obtain services and products provided by third party providers and use data from within their systems for the delivery of these services, including

when those products and services compete with those available from the original system provider. Where applicable and without reasonable restriction the vendor will provide an API (or suitable) access and documentation to facilitate third party usage within their solution. API's and data access methods will be provided to the dealer at a reasonable cost that is related to cost and effort incurred by the provider.

7. LIMITATION OF LIABILITY

Responsibilities for data security, usage, handling and compliance with the APP's should be clearly defined in the agreement and dealers indemnified for issues arising from the systems operation that are beyond dealer control.

8. FIT FOR PURPOSE

The system supplied by the vendor must be "Fit for Purpose" and therefore must continue to be able to provide services in a manner described in the agreement and as promised by the vendor in its representations and discussions.

9. SERVICE LEVEL AGREEMENT (SLA)

Vendors will be bound by an agreed minimum level of system performance and functionality. System malfunctions or underperformance will incur financial penalties at rates described in the agreement.

*Please note that the above guidance is not legal advice. If members require expert advice we recommend that you seek specialised legal advice from suitably qualified lawyers.