

## CargoNet Membership Agreement

**WHEREAS** VCA has developed a nationwide system for the database registration of stolen goods in transit and storage, including the type of intermodal chassis owned by Member (collectively, “Cargo”) to share this data quickly and accurately with law enforcement; and

**WHEREAS** this database (hereinafter the “Database”) enables VCA to help law enforcement identify lost and stolen Cargo; and

**WHEREAS** VCA has the experience and skills to assist and work with law enforcement agencies to identify stolen Cargo and work to secure release and recovery of stolen Cargo; and

**WHEREAS** VCA is developing other Cargo recovery and theft prevention services that in conjunction with the Database are herein jointly referred to as CargoNet.

**NOW, THEREFORE**, in consideration of the covenants set forth herein, the parties agree as follows:

1. **The General Service.** The services provided by VCA shall be the operation of the CargoNet services including the Database to help in the recovery of stolen Cargo and to prevent Cargo theft. VCA will receive Cargo theft data from Member, law enforcement and theft victims through CargoNet and will manage and organize the Cargo theft data through CargoNet to aid law enforcement in Cargo theft investigations. The CargoNet Database shall be available to law enforcement agencies and the National Insurance Crime Bureau (NICB), where NICB is supporting a law enforcement agency, for their Cargo theft investigations and will be able to provide statistical analysis of Cargo theft trends. When a search reveals a match with an item of Cargo in which Member has an interest, VCA shall notify Member of the match. **(See additional service details below in Appendix A)**

2. **Provision of Information.** In the event of the loss or theft of any Cargo insured by Member, Member will make reasonable efforts to promptly report full details of the loss or theft to CargoNet. In the event that Member is made aware of the recovery of any item of Cargo in which CargoNet is not involved, Member will take reasonable actions to promptly advise VCA through CargoNet of said recovery to enable VCA to update the CargoNet Database accordingly.

3. **Confidentiality.** Each party (hereinafter “Recipient”) agrees (i) to hold all information regarding the other party (hereinafter the “Discloser”) which Discloser may consider to be of a sensitive, proprietary or confidential nature (collectively, “Confidential Information”) that is made, or at any time during the term hereof becomes, available to Recipient in the strictest confidence, (ii) not to use such Confidential Information other than for the performance of its obligations under this Agreement, (iii) to disclose such Confidential Information only to its employees, agents or other necessary third parties (collectively, its “Representatives”) requiring such Confidential Information in connection with the performance by Recipient of its duties and obligations under this Agreement, and (iv) not to release or disclose such Confidential Information to any other party, except as may be specifically agreed in writing by the Discloser. Both parties agree that they will comply with all applicable laws, rules and regulations in connection with the privacy of such Confidential Information. Furthermore, Recipient may disclose Confidential Information only to the extent such disclosure is required by law (e.g., an order from a court, administrative agency or governmental body with the competent jurisdiction) *provided* that Recipient shall use its best efforts to provide the Discloser with such prior written notice thereof as is reasonable to allow Discloser to contest the disclosure of such Confidential Information. Confidential Information shall not include:

(a) information which as of the effective date of this Agreement is in the public domain or which becomes part of the public domain other than as a result of a breach by Recipient or any of its Representatives of the confidentiality obligations hereunder;

(b) information which Recipient has acquired from a third party who is not subject to any obligation of confidentiality; or

(c) information which Recipient can demonstrate it developed independently without reference to the Confidential Information acquired from the Discloser.

(d.) Any sale or use of database information beyond the purposes authorized either in this Policy or any agreement between VCA and any customer or user is strictly prohibited.

4. **Fees.** Member will pay the annual fees to VCA for the CargoNet services described and provided below under the Product Description. Member shall pay each annual fee no later than thirty (30) days after the renewal date of the Agreement or receipt of an invoice, whichever is the later.

5. **Additional Documents; Cooperation.** Upon any reasonable request from VCA, Member will sign any reasonable notifications, confirmations or other documents to facilitate, empower and/or otherwise assist VCA in its performance of CargoNet services under this Agreement unless to do so would cause Member to commit an illegal act or breach company policy.

6. **Term of Agreement.** The initial term (the "Initial Term") of this Agreement begins on the "Effective Date" noted in this Agreement and shall continue for twelve (12) consecutive months. This Agreement shall automatically renew for successive one (1) year terms thereafter (each a "Renewal Term" or "Term") unless terminated by either party by delivering written notice thereof to the other Party at least sixty (60) days in advance of the expiration of the then current Term.

7. **Termination.** A party may terminate this Agreement prior to the expiration of its term:

(a) in accordance with Section 6;

(b) immediately upon the occurrence of an Act of Insolvency (defined below) by the other party; or

(c) upon the occurrence of an Event of Default (defined below) by the other party;

An "Act of Insolvency" shall occur if a Party:

(1) institutes or has instituted against it any order or petition for relief, bankruptcy, reorganization or insolvency or any proceeding of any similar nature under any laws of the United States or any jurisdiction for the relief of debtors, where such order or petition, if involuntary, is not withdrawn, dismissed or discharged within 120 days after the institution thereof ;

(2) has a receiver, trustee, custodian, or liquidator appointed, or consents to the appointment of any of the foregoing, for all or any part of its business, property or assets; or

(3) makes a general assignment for the benefit of its creditors, and such act or event, if involuntary, is not cured or otherwise caused to be set aside within one hundred twenty (120) days after the occurrence thereof.

An "Event of Default" shall occur under this Agreement if either party materially breaches or fails to timely comply with, any representation, warranty, covenant or agreement under this Agreement, which breach or failure to comply remains uncured after sixty (60) days from the date of the other party's written notice thereof.

8. **Indemnification.** VCA shall indemnify, defend and hold harmless the Member from and against any and all liability, damage, loss, actions, demands and claims (including costs and attorney's fees associated with both third party and inter-party claims) which arise out of, caused by or result from (i) the negligence of its employees, contractors or agents, or (ii) the breach of any of its obligations, representations or warranties hereunder. Except in the case of the gross negligence or willful misconduct of VCA, its employees, contractors and agents, the limit of VCA's liability with respect to this indemnification obligation shall be the amount of the fees paid by Member to VCA in the preceding twelve (12) months for the services provided by VCA to Member pursuant to this Agreement. This Section 8 shall survive the expiration or earlier termination of this Agreement.

9. **Use of Information.** VCA will use commercially reasonable efforts to ensure that its own information and the information provided by third parties is accurate but VCA nor its third parties provider of information guarantees the accuracy or completeness of the information and shall not be held responsible or liable to pay compensation for any loss arising, either directly or indirectly, out of the use, misuse, or misinterpretation of that information by Member or for any inaccuracies contained therein.

a) Member grants to VCA, a non-exclusive license to: i) use the Cargo theft or loss data from Member ("Member Data") into the Database and to perform the Services; (ii) to disseminate Member Data for the permitted purposes under this Agreement; (iii) use for new and enhanced features and improvements to the Database; (iv) and use for research and development purposes.

10. **Indirect, Incidental and Consequential Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

11. **Insurance.** During the term of this Agreement, VCA shall, at its own cost and expense, obtain and maintain in full force and effect, the following insurance coverage:

(a) Commercial General Liability for bodily injury and property damage with limits of not less than \$1,000,000;

(b) Worker's Compensation as required by applicable laws, including a waiver of subrogation; and

(c) Automobile liability insurance as required by state law.

All policies of insurance must be underwritten by insurers rated A- or better. VCA will deliver to Member a Certificate(s) of Insurance that complies with the above requirements, concurrent with the delivery of the Agreement and shall deliver renewal Certificates as and when issued throughout the terms of this Agreement.

12. **Authority to Agree.** Each party represents and warrants to the other as follows:

(a) it is an organization, validly existing and in good standing under the laws of the jurisdiction of its organization;

(b) it is duly qualified and in good standing as a foreign organization in each jurisdiction where failure to so qualify would have a material adverse effect on its business;

(c) there are no dissolution, liquidation or bankruptcy proceedings pending, contemplated or threatened against it;

- (d) it has full power and authority to enter into this Agreement and perform its obligations hereunder;
- (e) the execution and delivery of this Agreement by it and the consummation of the transactions contemplated hereby have been duly and validly authorized by its appropriate officials and no other actions or proceedings by it are necessary to authorize this Agreement and the transactions contemplated hereby;
- (f) this Agreement constitutes the valid and binding obligation of such party, enforceable in accordance with its terms; and
- (g) it is not a party to or bound by any agreement or instrument that, individually or in the aggregate, impairs or adversely affects in any material way, or involves the substantial possibility of impairing or adversely affecting in any material way, or to the best of its knowledge, creates a conflict of interest that interferes or could reasonably be expected or be anticipated to interfere with, its ability to perform its obligations under this Agreement.

**13. Judicial Intervention and Choice of Law.** With respect to any controversy or claim arising out of or relating to this Agreement which cannot be settled within sixty (60) days from the date of receipt of the written notice of such controversy or claim, either party may commence a judicial proceeding against the other party in a court of competent jurisdiction (whether federal or state) sitting within the State and County of New York. This Agreement shall be construed and enforced in accordance with the laws of the State of New York without giving effect to its conflicts of laws principles.

#### **14. Miscellaneous.**

- (a) This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any prior oral or written agreements, arrangements, and understandings with respect thereto. No representation, promise, inducement, or statement of intention has been made by any party hereto that is not embodied herein, and no party shall be bound by or liable for any alleged representation, promise, inducement, or statement not so set forth herein.
- (b) This Agreement may be modified, amended, superseded, or cancelled, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the party or parties to be bound by any such modification, amendment, supersession, cancellation, or waiver.
- (c) Any provision of this Agreement that imposes an obligation or confers a right or benefit after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and be binding on VCA and the Member.
- (d) The provisions of this Agreement shall be binding upon and shall insure to the benefit of the successors and assigns of VCA and the Member; provided, however, VCA may not assign or delegate any of its obligations hereunder without the prior written consent of the Member, such consent not to be unreasonably withheld.

By their execution of this Agreement, VCA and the Member expressly signify their understanding and acceptance of all terms and provisions expressed herein and their agreement to be bound by them.

## PRODUCT DESCRIPTION

### **1. Product Description:**

VCA has developed and maintains a national database of stolen cargo and cargo conveyance theft claims; as well as providing a range of loss control, theft prevention, recovery and investigation support services. Insurance cargo theft claims reported by Licensee to CargoNet and identified as cargo or cargo conveyance (“Cargo”) theft claims will be tracked by the CargoNet database (“the Product”).

### **2. Delivery:**

Web based electronic delivery platforms (i.e. on-line and/or batch processing) of the requested layers of information. A password is required. Each sign-on and password may be used only by one authorized individual.

### **3. Services:**

Provided that Licensee and its contractors, brokers and agents report cargo losses to CargoNet via a secure website and or email server, VCA agrees to provide:

- i. reports and research of the details of the Cargo, Cargo unique identifiers such as serial numbers and case details, and to link each report to the corresponding incident if that incident has already been reported by another source.
- ii. a secured database and expertise through its support center working directly with law enforcement to aid in the recovery of stolen Cargo and vehicles.
- iii. training on the use and capabilities of the product to Licensee’s adjusters and investigators.
- iv. loss control advice and training to Licensee’s underwriting and loss control staff.
- v. reports to Licensee on losses processed and recovered Cargo, as directed by Licensee.
- vi. portal access to the Product to enter thefts, view theft trend charts, maps and graphs.
- vii. theft alerts, weekly theft summaries, monthly, quarterly and annual theft trend analytic reports.

### **4. Additional Terms and Conditions Applicable to this Product:**

- a. Licensee hereby requests the Products described herein and represents that this request is made by its authorized representative.
- b. Licensee hereby grants VCA permission to contact any insured and or owner of Cargo for the purpose of carrying out the functions of this Product Supplement such as registration, identification and recovery. In the event Licensee is made aware of the recovery of any item of Cargo in which the CargoNet database is involved, Licensee will take reasonable actions to promptly advise VCA through this Product of said recovery to enable VCA to update the CargoNet database. Licensee shall not resell to any third party for any commercial purpose any information that Licensee receives from this Product other than as permitted under this Product Supplement.
- c. Licensee acknowledges that this Product contains information received from third parties and that VCA shall not be held responsible or liable to pay compensation for any loss arising either directly or indirectly out of the use, misuse, misinterpretation of the information obtained from this Product by Licensee, or for any inaccuracies contained therein.