

BCIT, LLC d/b/a DEALER360
Standard Terms and Conditions Addendum

Customer and Dealer360 agree that these Standard Terms and Conditions contained in this Addendum (“**Standard T&Cs**”) form a part of and is incorporated by reference into the Master SaaS Agreement (the “**Master SaaS Agreement**”) by and between Customer and Dealer360 for Customer’s subscription to and use of the Services provided by Dealer360 that references these Standard T&Cs. These Standard T&Cs are in addition to the terms and conditions in the Master SaaS Agreement and also govern Customer’s and its Users’ access to and use of the Services. If any terms of the Master SaaS Agreement conflict with the terms of these Standard T&Cs, the terms of these Standard T&Cs shall control. The Master SaaS Agreement, with any attachments, addenda, exhibits, and policies attached to and/or referenced in the Master SaaS Agreement, and these Standard T&Cs together comprise the “**Agreement**.” All capitalized terms used but not defined herein have the meanings stated in the Master SaaS Agreement.

1. **Responsibility for Service Results.** Customer has and will retain: (a) sole control over the operation, maintenance and management of, and all access to and use of, Customer’s information technology infrastructure and systems, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services (collectively, “**Customer Systems**”), and (b) sole responsibility for all access to and use of the Services and any materials, manuals, specifications, documentation, technical or function descriptions and content provided by Dealer360 to Customer or Users under this Agreement (“**Dealer360 Materials**”) by any person by or through the Customer Systems or any other means controlled by Customer or any User, including any: (i) information, instructions or materials provided by any of such person or User to the Services or Dealer360; (ii) results obtained from any use of the Services or Dealer360 Materials; and (iii) conclusions, decisions or actions based on such use.

2. **Internet Access.** Customer acknowledges that use of the Services depends on adequate Internet connectivity. Customer shall be responsible for all fees in connection with any aspect of Internet connectivity. Customer shall be responsible for all aspects of this connectivity, and shall assume any associated risks, including any risks in connection with using open networks, such as the Internet.

3. **Service Administrator.** Customer shall designate one or more administrators (each, an “**Administrator**”) to be responsible for usage of the Services by Customer and its Users. Subject to Dealer360’s revocation, termination and suspension rights, the Administrator shall be the only person(s) authorized by Customer to: (a) grant, modify and revoke access to the Services for Users, and (b) designate the level of access that each User shall have to the Services, as such access levels are established by Dealer360 from time to time. Customer represents, warrants and covenants that the Administrator shall be duly authorized to bind Customer with respect to any change in access to or modification of the Services. Customer acknowledges that it and the Administrator(s) are responsible for: (i) monitoring and controlling each User’s access to and use of the Services in accordance with the terms and conditions of this Agreement, including the issuance and modification of passwords, and (ii) monitoring for unauthorized access to the Services through the Customer’s access to the Services or through the Customer Systems. Dealer360 shall have the right, but not the obligation, to monitor Users’ access to and use of the Services. Customer shall cooperate with Dealer360 with respect to: (a) investigation by Dealer360 of any suspected or alleged violation of this Agreement and (b) any action by Dealer360 to enforce this Agreement. Dealer360 may (or may ask Customer to) suspend or terminate any User’s access to the Services upon notice to Customer if Dealer360 reasonably determines that such User

has violated any of the terms of the Agreement. Customer shall be liable for any violation of this Agreement by any User. Dealer360 may from time to time, at its option, and with prior notice to Customer, change the process through which access may be granted to the Services.

4. **Changes to the Services.** Dealer360 reserves the right, in its sole discretion, to make any changes to the Services and Dealer360 Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of the Services to its Customers, (ii) the competitive strength of or market for Dealer360's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable laws and regulations.

5. **Subcontractors.** Dealer360 may from time to time in its discretion engage third parties to perform the Services (each, a "**Subcontractor**").

6. **Customer's Responsibilities.**

6.1 **Account Credentials.** Customer is solely responsible for maintaining the confidentiality of the Administrator and User logon user identifications, passwords and account information.

6.2 **Compliance and Use.** Customer shall (a) be responsible for Users' compliance with this Agreement; (b) Customer shall promptly notify Dealer360 of any changes in Administrator or any potential breaches in Customer's security in connection with the Services; (c) comply and to cause it Users to comply with all reasonable security measures that Dealer360 may from time to time specify in writing; (d) be responsible for the accuracy, quality, integrity and legality of Customer Data and of the means by which Customer acquired Customer Data; (e) use commercially reasonable means to prevent unauthorized access to or use of the Services and immediately notify Dealer360 in writing of any such unauthorized access or use or violation by Customer or its Users of this Agreement; (f) use the Services only in accordance with the permitted use and the terms and conditions of this Agreement; and (g) comply with all applicable laws and government regulations. Customer will cooperate and assist with any actions taken by Dealer360 to prevent or terminate unauthorized use of the Services.

6.3 **Use Limitations and Restrictions.** Customer shall not, and shall not permit any Users or third parties to, access or use the Services or Dealer360 Materials except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, and shall not permit any Users or third parties to:

(a) copy, modify, create derivative works of, or make improvements to the Services or Dealer360 Materials;

(b) frame, mirror, republish, rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise commercially exploit the Services or Dealer360 Materials to any person in any form or media or by any means, including on or in connection with the Internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;

(c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part;

(d) make available any portion of the Services or Dealer360 Materials to any person other than Users;

(e) bypass, disable or breach any security device or protection used by the Services or Dealer360 Materials or access or use the Services or Dealer360 Materials other than by a User through the use of his or her own then valid access credentials (such as user name, password, identification number, etc.);

(f) input, upload, transmit or otherwise provide to or through the Services or Dealer360's information technology infrastructure used by or on behalf of Dealer360 in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Dealer360 or through the use of third-party services, (collectively, "**Dealer360 Systems**"), any information or materials that are unlawful or injurious, or contain, transmit or activate any malicious or harmful code;

(g) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Dealer360 Systems or Dealer360's provision of services to any third party, in whole or in part;

(h) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Dealer360 Materials, including any copy thereof;

(i) access or use the Services or Dealer360 Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right (as defined in **Section 8.1** below) or other right of any third party, or that violates any applicable Law;

(j) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;

(k) access or use the Services or Dealer360 Materials for purposes of competitive analysis of the Services or Dealer360 Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Dealer360's detriment or commercial disadvantage; or

(l) otherwise access or use the Services or Dealer360 Materials beyond the scope of the authorization granted under this Agreement.

6.4 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by **Section 6.3** above, Customer shall, and shall cause its Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Dealer360 Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Dealer360 of any such actual or threatened activity.

6.5 Provision of Customer Data. Customer will be responsible for inputting, uploading and otherwise providing all Customer Data to the Services, which Customer Data may include protected personal information as defined by applicable law ("**Personal Information**"). Customer will provide such Customer Data in a format consistent with the requirements set forth by Dealer360 or its documentation. Errors in loading Customer Data into the applicable Services due to defective media, erroneous data or failure to meet such requirements may cause Customer Data to be rejected by the Services and Dealer360 will have no responsibility for any related impact on Customer's ability to access or use the Services.

6.6 Prohibited Data. Customer acknowledges that the Services are not designed with security processes and access management for processing any data that falls outside the scope of the data fields

offered through the Services or that is otherwise not permitted by Dealer360 (collectively, “**Prohibited Data**”). Customer shall not, and shall not permit any User or other person to, provide any Prohibited Data to, or process any Prohibited Data through, the Services, the Dealer360 Systems or any Dealer360 employee, contractor or representative. Customer is solely responsible for reviewing all Customer Data and shall ensure that no Customer Data constitutes or contains any Prohibited Data.

6.7 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any User in connection with the Services; (c) the Customer Systems; (d) the security and use of Customer's and its Users' access credentials; and (e) all access to and use of the Services and Dealer360 Materials directly or indirectly by or through the Customer Systems or its or its Users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, such access or use.

6.8 Access and Security. Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all access credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for processing by the Services.

6.9 Data Backup. The Services include Dealer360's standard data backup procedures as described in Dealer360's backup policy then in effect, and as may be amended from time to time, a copy of which may be obtained from Dealer360 upon Customer's written request. Notwithstanding the foregoing, the Services do not replace the need for Customer to maintain regular data backups or redundant data archives. DEALER360 HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA.

7. Payment.

7.1 Invoice Dispute. If Customer reasonably and in good faith disputes all or any portion of any invoice, Customer shall notify Dealer360 in writing of its objection within twenty (20) days from the date of the applicable invoice, provide a detailed description of the reasons for the objection, and pay the portion of the invoice which is not in dispute. If Customer does not object in a timely manner within this time period, the amount invoiced shall be conclusively deemed correct by the parties.

7.2 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

(a) Dealer360 may charge interest on the past due amount at the rate of one and one-half percent (1.5%) per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law;

(b) Customer shall reimburse Dealer360 for all reasonable costs incurred by Dealer360 in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees;

(c) Dealer360 may suspend performance of the Services until all past due amounts and interest thereon, if any, have been paid, without incurring any obligation or liability to Customer or any other person by reason of such suspension; and

(d) Dealer360 may condition future Service subscription renewals on payment terms shorter than those specified in the Master SaaS Agreement.

7.3 No Deductions or Setoffs. All amounts payable to Dealer360 under this Agreement shall be paid by Customer to Dealer360 in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason.

8. Intellectual Property Rights.

8.1 Services and Dealer360 Materials. All right, title and interest in and to the Services and Dealer360 Materials, including all Intellectual Property Rights therein, are and will remain with Dealer360 or its respective licensors. Customer has no right, license or authorization with respect to any of the Services or Dealer360 Materials except as expressly in this Agreement and subject to the terms of this Agreement. All other rights in and to the Services and Dealer360 Materials are expressly reserved by Dealer360 and the respective third-party licensors. As used in this Agreement, “**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent (including patent applications and disclosures), copyright, mask work, moral right, trademark, trade secret, know-how, database protection or other intellectual property or proprietary rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

8.2 Customer Data. As between Customer and Dealer360, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in this **Section 8**.

8.3 Consent to Use Customer Data. Customer hereby grants all such rights and permissions in or relating to Customer Data: (i) to Dealer360, its Subcontractors and the Dealer360 personnel as are necessary or useful to provide and perform the Services or to prevent or address service or technical problems under this Agreement; and (ii) to Dealer360 as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.

(a) Dealer360 shall not retain, use, disclose, or otherwise process Personal Information for any purpose other than for the purpose set forth in this Agreement, or otherwise permitted by applicable law, Customer, the data owner, or the consumer to whom the Personal Information relates. Dealer360 will not sell any Personal Information that Dealer360 collects, accesses, or otherwise processes pursuant to this Agreement.

(b) Dealer360 shall promptly notify Customer in writing of any request by any consumer to exercise his or her rights as set forth under applicable Privacy and Security Requirements (“**Data Subject Request**”). Dealer360 shall not respond to any such Data Subject Request unless Customer expressly authorizes Dealer360 to do so, or as required to do so by applicable law. Dealer360 shall provide reasonable assistance to Customer for the fulfillment of its applicable obligations to respond to any Data Subject Request. Customer shall pay Dealer360’s reasonable cost for employee time and resources in providing such assistance.

8.4 Service Data. Notwithstanding anything to the contrary in this Agreement, Dealer360 has the right to collect and use Service Data to develop, improve, support, and operate its products and services during and after the Term of this Agreement. As used herein, “**Service Data**” means query logs, and any data (other than Customer Data) relating to the usage of the Services by Customer and its Users and/or the operation, support, and performance of the Services. Customer hereby unconditionally and irrevocably assigns to Dealer360 all right, title and interest in and to the Service Data, including all

Intellectual Property Rights relating thereto. This Section does not give Dealer360 the right to identify Customer as the source of any Service Data without written permission from Customer.

8.5 Aggregated and De-Identified Data. Notwithstanding anything to the contrary, Dealer360 shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom, provided that such data (i) relates to a group or category of individuals from which individual identities have been removed, and that is not linked or reasonably linkable to any individual; or (ii) cannot reasonably identify, relate to, describe, be associated with, or be linked to a particular individual, and that Dealer360 has implemented technical safeguards and business process to prohibit re-identification of Customer Data) (collectively, "**Aggregated Data**"), and Dealer360 will be free (during and after the Term hereof) to (i) use such Aggregated Data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Dealer360 offerings, and (ii) disclose Aggregated Data solely in connection with its business, including, without limitation, for training, marketing and promotional efforts.

8.6 Feedback. If Customer or any User elects to provide Dealer360 with any suggestions, comments, improvements, enhancement requests, recommendations, corrections, ideas or other feedback relating to the Services or any other Dealer360's products or services (collectively, "**Feedback**"), Customer acknowledges and agrees that Dealer360 may freely use and incorporate into Dealer360's products and services any such Feedback without any obligation, payment, or restriction based on Intellectual Property Rights or otherwise, excluding any Customer Confidential Information contained in the Feedback.

8.7 Marketing. Dealer360 may use and display Customer's name, logo, trademarks, and service marks on Dealer360's website and in Dealer360's marketing materials in connection with identifying Customer as a Customer of Dealer360; provided that Dealer360 complies with any branding guidelines provided by Customer to Dealer360.

8.8 Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services or Dealer360 Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services and the Dealer360 Materials are and will remain with Dealer360 and its licensors.

8.9 Improvements. Neither Customer nor any of its Users shall make any improvements or modifications to the Services or create any derivative works based upon the Services (collectively, "**Improvements**") without Dealer360's express written consent. Any such Improvements shall be solely owned by Dealer360 and included under the definition of the Services and shall be automatically included in this Agreement. Customer hereby irrevocably transfers and assigns to Dealer360, and agrees to irrevocably transfer and assign to Dealer360 (and shall cause its employees and contractors to so irrevocably transfer and assign to Dealer360), all right, title and interest in and to the Improvements, including all Intellectual Property Rights therein.

9. Confidentiality.

9.1 Confidential Information. In connection with this Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to **Section Error! Reference source not found.**, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, Customers, retailers and pricing, and information with respect to which the Disclosing Party has

contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing, the Services and all Dealer360 Materials are the Confidential Information of Dealer360 and the terms of this Agreement are the Confidential Information of Dealer360.

9.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by non-compliance with this Agreement by the Receiving Party; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

9.3 Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. If Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party shall, to the extent legally permitted, provide Disclosing Party with advance written notification and cooperate in any effort to obtain confidential treatment of the Confidential Information. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

9.4 Defend Trade Secrets Act Notice. Each party acknowledges receipt of the following notice pursuant to 18 U.S.C § 1833(b)(1): "An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal."

10. Audit. During the Term and at least for twelve (12) months after the termination of this Agreement, Dealer360 shall have the right, with reasonable notice to Customer of at least [fifteen (15)] days and during Customer's normal business hours, at Dealer360's sole expense and in as non-disrupting a manner as reasonably possible, to verify Customer's compliance with Customer's obligations under this Agreement through a remote or on-site audit of Customer's records, facilities and licensing processes, by Dealer360 or a third party designated by Dealer360. Customer shall permit up to one such audit per year, including once during the 12 month period following the termination of this Agreement for any reason. Dealer360 may use such audit reports solely to enforce its rights hereunder and shall otherwise treat audit reports and any information received in connection with such audits as Confidential Information. In the event that an audit establishes that Customer is in material breach of its obligations hereunder (including, without limitation, underpaying any Fees to Dealer360), Customer shall reimburse Dealer360 for the cost of the audit and shall promptly pay to Dealer360 all outstanding Fees.

11. Termination.

11.1 Termination. In addition to any other express termination right set forth in the Master SaaS Agreement or the Standard T&Cs, this Agreement may be terminated as follows:

(a) Dealer360 may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than fifteen (15) days after Dealer360's delivery of written notice thereof; or (ii) breaches any of its obligations under **Section 6.3** (Use Limitations and Restrictions) or **Section 6.6** (Prohibited Data); or

(b) Subject to Section 11.1(a), either party may terminate this Agreement (including all related Order Forms) if the other party (a) fails to cure any material breach of this Agreement (except as set forth in Section 11.1(a) above) within thirty (30) days after receipt of written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party and is not dismissed within sixty (60) days.

11.2 Effect of Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement: (a) all rights and licenses granted by Dealer360 to Customer hereunder shall immediately terminate, and Customer and its Users shall immediately cease use of and access to the Services; (b) Customer shall pay, within thirty (30) days of the date of termination, for all Fees and other amounts due and payable through the end of the calendar month in which termination is effective; (c) if Dealer360 terminates this Agreement pursuant to **Section 11.1(a)** or **Section 11.1(b)**, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees, within fifteen (15) days of receipt of Dealer360's invoice therefor; (d) Customer shall promptly return to Dealer360, or, at Dealer360's written request, destroy all documents and tangible materials containing, reflecting, incorporating or based on any Dealer360 Materials or Dealer360's Confidential Information; and (f) subject to Customer's retrieval right of Customer Data as set forth below, Dealer360 will permanently erase all Customer Data from the Services, provided that Dealer360 may retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course, and further provided that Dealer360's obligations set forth in this Section 11.2(f) will not apply to any Service Data or Aggregated Data. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.

11.3 Customer Data Retrieval. Upon written notice to Dealer360, Customer will have up to thirty (30) calendar days from termination or expiration of this Agreement to submit a written request (which can be via e-mail) to Dealer 360 to have its Customer Data exported in a format designated by Dealer360 ("**Retrieval Right**"). If Customer requests a Customer Data to be exported in a different format or if the export process requires more time than anticipated by Dealer360, Dealer360 reserves the right to charge Customer at Dealer360's then-current standard rate for professional services. After the Retrieval Right period, Dealer360 shall have no further obligation to make Customer Data available after termination of this Agreement and shall thereafter promptly delete Customer Data.

11.4 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Customer's obligation to pay any amounts due and payable, **6.3** (Use Limitations and Restrictions), **8** (Intellectual Property Rights) (excluding **8.7** (Marketing)), **9** (Confidentiality), **11.2** (Effect of Termination), **11.3** (Retrieval Right)

(only for the limited period expressly permitted therein), **11.4** (Surviving Terms), **12** (Representations and Warranties), **13** (Indemnification), **14** (Limitation of Liability), and **15** (Miscellaneous).

12. **Representations and Warranties.**

12.1 **Mutual Representations and Warranties.** Each party represents and warrants to the other party that: (a) it has the full right, power and authority to enter into and perform its obligations under this Agreement; (b) the execution of this Agreement by its representative has been duly authorized by all necessary corporate or organizational action of such party; (c) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and (d) it shall comply with all applicable laws and regulations in performing its obligations under this Agreement.

12.2 **Customer Warranties.** Customer further represents and warrants that its use of the Services shall comply with (i) all applicable international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality, and/or security of protected Customer Data, including, but not limited to, data protected under applicable state and federal data privacy law(s) and the California Consumer Privacy Act, as amended or replaced from time to time; (ii) all applicable industry standards concerning privacy, data protection, confidentiality or information security including, without limitation, the Payment Card Industry Data Security Standard; and (iii) applicable provisions of Dealer360's and Customer's written requirements, currently in effect and as they become effective relating in any way to the privacy, confidentiality, and/or security of Customer Data or applicable privacy policies, statements or notices that are provided to Customer by Dealer360 in writing (collectively, "**Privacy and Security Requirements**"). Customer also represents and warrants that it has obtained any necessary consents or made any disclosures necessary to provide the Customer Data to Dealer360 through the Services.

12.3 **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN **SECTION 12.1** , ALL SERVICES AND DEALER360 MATERIALS ARE PROVIDED "AS IS" AND DEALER360 HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND DEALER360 SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, DEALER360 MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR DEALER360 MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS. DEALER360 DOES NOT WARRANT THAT IT WILL REVIEW THE CUSTOMER DATA FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE CUSTOMER DATA WITHOUT LOSS. DEALER360 SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, FOR ISSUES RELATED TO THIRD-PARTY HOSTING PROVIDERS WITH WHOM CUSTOMER SEPARATELY CONTRACTS, OR FOR ISSUES RELATED TO THE PRIVACY OR SECURITY OF WIRELESS

DATA TRANSMISSIONS. IN ADDITION, THE WIRELESS DEVICE BROWSER IS GENERALLY PRE-CONFIGURED BY LICENSEE'S WIRELESS INTERNET SERVICE PROVIDER. CUSTOMER SHOULD CHECK WITH SERVICE PROVIDERS FOR INFORMATION ABOUT THEIR PRIVACY AND SECURITY PRACTICES. FOR CUSTOMER DATA OR CONFIDENTIAL INFORMATION SENT TO OR FROM DEALER360 OVER THE INTERNET FROM A MOBILE DEVICE, DEALER360 RESERVES THE RIGHT TO LIMIT SUCH CONNECTIONS TO "SECURE SESSIONS" THAT HAVE BEEN ESTABLISHED USING TRANSPORTATION LAYER SECURITY. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

13. **Indemnification.**

13.1 **By Customer.** Subject to the terms of this Agreement, Customer will defend Dealer360 and its affiliates and each of their respective officers, directors, employees, agents, successors and assigns from and against any claim by a third party arising from or relating to: (i) any Customer Data or any product or service offered by Customer in connection with or related to the Service, (ii) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement; or (iii) gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any User, or any third party on behalf of Customer or any User, in connection with this Agreement. Customer will indemnify and hold harmless Dealer360 from and against any damages and costs awarded against Dealer360 or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such claim.

13.2 **By Dealer360.** Subject to the terms of this Agreement, Dealer360 will defend Customer from and against any claim by a third party alleging that any Service, when used as authorized under this Agreement, infringes a U.S. patent or U.S. copyright and will indemnify and hold harmless Customer from and against any damages and costs awarded against Customer or agreed in settlement by Dealer360 (including reasonable attorneys' fees) resulting from such claim. If Customer's use of the Service is (or in Dealer360's opinion is likely to be) enjoined, if required by settlement or if Dealer360 determines such actions are reasonably necessary to avoid material liability, Dealer360 may, in its sole discretion, either: (a) substitute substantially functionally similar products or services; (b) procure for Customer the right to continue using the Services; or if (a) and (b) are not commercially reasonable, (c) terminate this Agreement and refund to Customer the Fees paid by Customer for the Services that were prepaid but not used by Customer. The foregoing indemnification obligation of Dealer360 will not apply to the extent the applicable claim is attributable to: (1) the modification of the Services by any party other than Dealer360 or based on Customer's specifications or requirements; (2) the combination of the Services with products, hardware, software, systems, applications or processes licensed or procured from a party other than Dealer360; (3) any unauthorized use of the Services; or (4) any action arising as a result of Customer Data, or any deliverables or components not provided by Dealer360. **THIS SECTION SETS FORTH DEALER360'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.**

13.3 **Indemnification Procedure.** In the event of a potential indemnity obligation under this Section 13, the party seeking indemnity (the "**Indemnified Party**") will: (i) promptly notify the other party (the "**Indemnifying Party**") in writing of the claim, (ii) allow the Indemnifying Party the right to control the investigation, defense and settlement (if applicable) of such claim at the Indemnifying Party's sole cost and expense, and (iii) upon request of the Indemnifying Party, provide all necessary and reasonable cooperation at the Indemnifying Party's expense. Failure by the Indemnified Party to notify the Indemnifying Party of a claim under this Section 13 shall not relieve the Indemnifying Party of its obligations under this **Section 13** except to the extent that the Indemnifying Party can demonstrate that it

has been materially prejudiced as a result of such failure. The Indemnifying Party shall immediately take control of the defense and investigation of such claim and shall employ counsel reasonably acceptable to the Indemnifying Party to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnifying Party may not settle any claim in any matter that would require obligation on the part of the Indemnified Party (other than payment or ceasing to use infringing materials), or any admission of fault by the Indemnified Party, without the Indemnified Party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Further, any indemnification obligation under this **Section 13** will not apply if the Indemnified Party settles or makes any admission with respect to a claim without the Indemnifying Party's prior written consent.

14. **Limitations of Liability.**

14.1 **EXCLUSION OF DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL EITHER PARTY OR ITS PARENT(S), SUBSIDIARIES OR ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR SUBCONTRACTORS ("**DEALER360 ENTITIES**"), BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL ANY OF THE DEALER360 ENTITIES OR ANY OF ITS RESPECTIVE LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.2 **CAP ON MONETARY LIABILITY.** IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF THE DEALER360 ENTITIES UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO DEALER360 FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.3 **Exceptions.** THE EXCLUSIONS AND LIMITATIONS IN **SECTION 14.1** DO NOT APPLY TO: (a) EITHER PARTY'S OBLIGATIONS UNDER **SECTION 13** (INDEMNIFICATION), (b) DAMAGES ARISING FROM INFRINGEMENT OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS, (c) ANY CLAIMS FOR NON-PAYMENT, (d) LIABILITY FOR EITHER PARTY'S GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, or (e) BODILY INJURY OR DEATH.

15. **Miscellaneous.**

15.1 **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership,

joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.2 Notices. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to Customer at the address set forth on the Master SaaS Agreement and to Dealer360 as indicated below, or such other address as may be given by either party to the other in accordance with this Section. Notices to Dealer360 shall be sent to Attn: Controller, 10301 E Arapahoe Road #200, Centennial, CO 80112, or via facsimile at (303) 928-6994, or notices@dlr360.com, with a copy to Holland & Knight, Attn: Stephen Dietrich, 1801 California Street, Suite 5000, Denver, Colorado 80202, Fax 303.974.6659, stephen.dietrich@hklaw.com. Notices sent in accordance with this **Section 15.2** will be deemed effectively given: (a) when received, if delivered by hand; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the 5th day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.3 Entire Agreement. This Agreement, together with the Master SaaS Agreement, these Standard T&Cs, and any attachments, addenda, exhibits, Order Forms, and/or policies attached to and/or referenced in this Agreement, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

15.4 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities. Each party shall promptly provide notice of any such assignment. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement unless Dealer360 specifically consents to such relief in writing. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section will be null and void.

15.5 Headings; No Third-party Beneficiaries. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement. There are no third-party beneficiaries under this Agreement.

15.6 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15.7 Severability. If a court of competent jurisdiction holds any provision of this Agreement to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect.

15.8 Force Majeure. Neither party shall be deemed to be in default of any provision of this Agreement (other than Customer's obligation to pay amounts due to Dealer360 hereunder) for any failure

in performance resulting from acts or events beyond its reasonable control, including acts of God, acts of civil or military authority, civil disturbance, strikes, fires or other catastrophes.

15.9 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Colorado. Any legal suit, action or proceeding arising out of this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Colorado in each case located in the City and County of Denver, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

15.10 Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

15.11 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under **Section 9** or, in the case of Customer, **Section 6.3** (Use Limitations and Restrictions)**Error! Reference source not found., Section 6.4** (Corrective Action and Notice) or **Section 6.6** (Prohibited Data) would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

15.12 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

15.13 Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

15.14 Export Control. Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any third parties to) access or use any of the Services in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to any of the Services any information that is controlled under the U.S. International Traffic in Arms Regulations.